LIBRARY
SUPREME COURT, U. S

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1949

No. 150

ALBERT G. DICKINSON, PETITIONER,

vs.

PETROLEUM CONVEESION CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 29, 1949.

CERTIORARI GRANTED OCTOBER 10, 1949.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No.

ALBERT G. DICKINSON, PETITIONER,

vs.

PETROLEUM CONVERSION CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

INDEX

	Original	Print
Proceedings in United States Court of Appeals for the Second Circuit	1	1
Motion to dismiss appeal	1	1
Affidavit of Solomon Kaufman in support of motion	4	3
Exhibit "A"—Intervener's answer, counterclaim against plaintiff Albert G. Dickinson and cross-claim against Petroleum Conversion Corporation	12	9
Exhibit "B"—Intervener's answer, counterclaim and cross-claim	19	15
Exhibit "C"—Decree of April 10, 1947	29	23
Exhibit "D"—Final decree	39	30
Exhibit "E"—Notice of appeal	48	38
Exhibit "F"—Order that trustee's proposal not to prosecute appeal be approved, etc.	52	40
Affidavit of Alexander Kahan in opposition to motion to dismiss appeal	54	41
Order allowing certiorari	102	70

Proceedings in United States Court of Appeals for the Second Circuit—Continued	Original	Print
Motion to extend time to docket, etc.	59	43
Affidavit of Alexander Kahan in support of motion	61	45
Appendix—Certificate of Referee to order to permit continuation of appeal	63a	47
Appendix—Order to permit continuation of appeal	64	47
Motion to amend notice of appeal, etc.	68	49
Affidavit of Alexander Kahan in support of motion	71	52
Affidavit of James A. Vaughan in opposition to motion to amend notice of appeal, etc.	75	54
Exhibit "A"—Report of trustee	80	58
Exhibit "A-1"—Order that trustee's proposal not to prosecute the appeal be approved	84	61
Opinion, Hand, J.	86	62
Order denying motion to dismiss	94	68
Decision on reconsideration	96	68
Order denying motion to extend time, etc.	97	69
Decision on motion to reconsider	99	69
Order denying motion to reconsider	100	70
Clerk's certificate (omitted in printing)	102	70

[fol. 1]

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

ALBERT G. DICKINSON, Plaintiff-Appellant,

against

ARTHUR W. RINKE, GENEVIEVE LLOYD, EARL BEATTY, THE MARINE MIDLAND TRUST COMPANY OF NEW YORK and Ernest B. Osborne, Henry C. Lovis and A. R. L. Dohme, as Stockholders' Committee of Petroleum Conversion Corporation, Defendants,

and

FRANCIS J. MULLIGAN, Public Adminstrator of the County of New York, as Administrator of the goods, chattels and credits of Fred B. Lloyd, deceased, Defendant-Appellant-Appellee,

and

PETROLEUM CONVERSION CORPORATION, Intervener,

and

E. LEWIS BURNHAM and JAMES A. VAUGHAN, et al., Interveners-Appellees

MOTION TO DISMISS APPEAL—Filed March 31, 1949

Sirs:

Please take notice that upon the annexed affidavit of Solomon Kaufman, sworn to the 2nd day of March, 1949, the undersigned will move this Court at the United States Courthouse, Foley Square, New York, N. Y., on the 7th day of March, 1949, at 10:30 A. M. or as soon thereafter as ccunsel can be heard, for an order dismissing the purported appeal of William M. Duffy, Jr., as temporary receiver of [fol. 2] Petroleum Conversion Corporation, bankrupt, on behalf of said Petroleum Conversion Corporation, in the action entitled "Albert G. Dickinson, Plaintiff, against Arthur W. Rinke, et al., defendants, Petroleum Conversion Corporation, E. Lewis Burnham and James A. Vaughan, et al, interveners," upon the following grounds: (1) that the decree appealed from dated August 3, 1948 does not adversely affect said appellant; (2) that Petroleum Conver-

sion Corporation failed to appeal within the statutory period from the decree in said action dated and filed April 10, 1947, which finally determined the rights of said Petroleum Conversion Corporation and dismissed on the merits its claims in said action insofar as is here material; (3) that said decree of April 10, 1947, as appears from its face, was entered on the motion of the attorney for Petroleum Conversion Corporation jointly with the attorney for the successful interveners E. Lewis Burnham and James A. Vaughan; (4) that Petroleum Conversion Corporation has deliberately failed to appeal from the decrees of August 3, 1948 and April 10, 1947 and has not authorized or approved said appeal by said temporary receiver; that in fact said temporary receiver, as trustee in said bankruptcy, reported that said appeal should not be prosecuted and said report was approved by order of the Referee; (5) that the attorney who signed and filed the Notice of Appeal by said temporary receiver was not authorized to act and was disqualified from acting on behalf of said temporary receiver under General Orders, Order #44 (11 U. S. C. A., § 53); (6) that William M. Duffy, Jr., as such temporary receiver, at no time secured leave to intervene in said action nor was he substituted in the place and stead of intervener Petroleum Conversion Corporation and was not a party to said action within the meaning of Rule 73 (a) and (b), F. R. C. P.; (7) that William M. Duffy, Jr., as temporary [fol. 3] receiver in bankruptcy, appointed in the District of Delaware, was without capacity to appeal on behalf of said bankrupt in this District; and for such other and further relief as to this Court may seem just and proper.

Dated, New York, March 2, 1949.

Yours, etc., Solomon Kaufman, Attorney for Plaintiff-Appellant, Office and P. O. Address: 70 Pine Street, Borough of Manhattan, New York 5, N. Y.

To: Alexander Kahan, Esq., Attorney for William M. Duffy, Jr., as Trustee in Bankruptcy of Petroleum Conversion Corporation, Bankrupt, Intervener-Appellant, 30 Broad Street, New York, N. Y. J. Harlin O'Connell, Esq., 120 Broadway, New York, N. Y. James A. Vaughan, Esq., 165 Broadway, New York, N. Y. Wickes, Riddel, Bloomer, Jacobi & McGuire, Esqs., 60 Broadway, New York, N. Y. Satterlee, Warfield & Stephens, Esqs., 49 Wall Street, New York, N. Y. John C. Sebright, Esq., 122 East 42nd Street,

New York, N. Y. Leo Kaplan, Esq., 122 East 42nd Street, New York, N. Y. Joseph A. Cox, Esq., 51 Chambers Street, New York, N. Y.

[fol. 4] UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

AFFIDAVIT OF SOLOMON KAUFMAN IN SUPPORT OF MOTION

STATE OF NEW YORK,
County of New York, ss:

Solomon Kaufman, being duly sworn, deposes and says:

1. I am an attorney for the plaintiff-appellant Albert G. Dickinson, and make this affidavit in support of the annexed application to dismiss the appeal of William M. Duffy, Jr., as temporary receiver in bankruptcy of Petroleum Conversion Corporation, bankrupt, on behalf of said Petroleum Conversion Corporation, and in opposition to [fol. 5] his motion for an extension of time to file his record on appeal and docket the appeal herein.

2. The pertinent facts are as follows: On March 25, 1938 plaintiff-appellant Albert G. Dickinson commenced an action against defendant Fred B. Lloyd and others for an accounting and discovery with respect to stock issued by Petroleum Conversion Corporation. Plaintiff's claim was dismissed after trial and on appeal the judgment was reversed and the action remanded for a new trial. (*Dickinson* v. *Rinke*, 132 Fed. (2d) 805). On December 3, 1943 and prior to the new trial Petroleum Conversion Corporation for itself, and E. Lewis Burnham and James A. Vaughan, in behalf of themselves and all of the Subscribers to certain agreements and who paid money to Arthur W. Rinke, Agent, were permitted by order based on a stipulation, to intervene and plead to the complaint. By counterclaim and cross-claim in their respective answers, said interveners sought, sofar as is here material, separately and in the alternative to recover from the plaintiff and the defendant Lloyd's estate, the sum of $87,310.28. Copies of said counterclaims are annexed hereto and marked Exhibits "A" and "B".

3. Stripped to its essentials, the Petroleum Conversion Corporation's counterclaim and cross-claim alleges that

Petroleum Conversion Corporation was a reorganization of Knox Process Corporation; that Lloyd was a Director and President of both Petroleum Conversion Corporation and Knox, and dominated the reorganization proceedings; that Knox was incorporated in 1923 to develop an oil cracking process; that by the end of 1924 it was in acute financial distress; that persons interested in the continuance of its experimental and development work determined to make funds available for such purpose and to prevent such funds from being seized by Knox creditors, the monies [fol. 6] were paid under a stock subscription agency to Arthur W. Rinke, as Agent of the Subscribers; that a total of approximately $600,000 was so paid during 1925 until the end of 1926 at which time Petroleum Conversion Corporation held its organizational meeting.

That in February of 1925 an arrangement was made whereby Dickinson would accept Knox stock at par for any monies paid by him for mechanics' liens filed against Knox's oil cracking plant; instead Dickinson through Lloyd, acquired said oil cracking plant at a mechanic's lien foreclosure sale in or about January, 1926, for the sum of $87,310.28; that no disclosure of the purchase price was made; that Dickinson demanded and received out of Rinke Agency funds, in instalments during 1926 and prior to said organization of Petroleum Conversion Corporation, the sum of $174,620.56 with interest on one-half thereof until September 7, 1926, totaling $176,245.24, and divided $87,310.28 with Lloyd; that Dickinson then transferred to Petroleum Conversion Corporation said oil cracking plant and was voted 609,600 shares, par value $5 each, of which 140,000 were to be returned to the treasury.

That $87,310.28 of the monies received out of Rinke Agency funds representing the amount over the cost of said oil cracking plant, constituted a secret and unlawful profit; that Petroleum Conversion Corporation was the equitable owner of said plant, and that 244,041 shares of Petroleum Conversion Corporation's stock issued to Lloyd, which was the subject of plaintiff's action, should be cancelled on the ground that the issuance thereof was void for want of consideration, improper evaluation and fraud.

4. It is to be observed that the "central core" of facts upon which Petroleum Conversion Corporation's claim was [fol. 7] founded is its alleged status and rights as a reor-

ganization of Knox and the fiduciary relationship of Lloyd to Petroleum Conversion Corporation and its alleged predecessor Knox Process Corporation.

5. Interveners E. Lewis Burnham and James A. Vaughan, on behalf of themselves and the other Rinke Agency Subscribers alleged a similar counterclaim and cross-claim against Dickinson and Lloyd, seeking to recover said $87,310.28, also as a secret and illegal profit.

6. By decree dated April 10, 1947 the claims of all parties including Petroleum Conversion Corporation were dismissed, except the claim of the interveners Burnham and Vaughan on behalf of themselves and all other Rinke Agency Subscribers against the plaintiff and Lloyd's estate which was sustained for the recovery not only of said $87,310.28, but for the entire sum received by Dickinson and Lloyd, to wit: $176,245.24 with interest from 1926. In contrast to the Petroleum Conversion Corporation's counterclaim, the "aggregate of operative facts" upon which the Court's determination was based was that said sum had been paid out of Rinke Agency funds in breach of the fiduciary duty of Rinke as Subscribers' trustee, in which breach Dickinson and Lloyd had participated, and pursuant to a conspiracy among Rinke, Dickinson and Lloyd to defraud said Subscribers, and that the Rinke Agency Subscribers had received nothing for said sum.

7. Said decree of April 10, 1947, entered that day, further provided for notice to the Rinke Agency Subscribers and successors to their interest, to apply to intervene and assert their respective claims against the plaintiff and [fol. 8] Lloyd's estate and for a hearing of such claims and for judgment in favor of those Rinke Agency Subscribers and their successors whose claims were allowed by the Court. This procedure was expressly designed by the trial court to follow the suggestion of this Court in *York* v. *Guaranty Trust Company*, 143 Fed. (2d) 503, on the ground that the counterclaim on behalf of the Rinke Agency Subscribers was a spurious class action under Rule 23 (a) (3), F. R. C. P. A copy of said decree is annexed hereto and made a part hereof and marked Exhibit "C".

8. The Court's attention is particularly directed to the paragraphs of said decree numbered "5", "6" and "12"

which specifically dismiss on the merits the claims of Petroleum Conversion Corporation which is the subject of its present appeal. However, no appeal was taken by Petroleum Conversion Corporation from said decree at any time. It is to be noted that said decree, as appears from the face of the decree itself, was entered on the motion of its attorney, J. Harlin O'Connell, Esq. jointly with the attorney for the successful interveners E. Lewis Burnham and James A. Vaughan. As Mr. Kahan, the attorney for the trustee contended in the court below on a motion for leave to intervene on behalf of certain preferred stockholders of Petroleum Conversion Corporation, the failure of Petroleum Conversion Corporation to appeal from said decree was deliberate. In his affidavit on said motion, sworn to March 1, 1948, at page 3 thereof, he stated that he had conferred with Mr. James A. Vaughan on December 25, 1947, and that "Mr. Vaughan stated that the corporation received a fair trial and that no appeal was taken or would be taken by the corporation for that reason; • • • ." This was not denied by Mr. Vaughan in his opposing affidavit sworn to March 8, 1948.

[fol. 9] 9. Mr. O'Connell tried the action prior to the entry of the decree of April 10, 1947 on behalf of both the Petroleum Conversion Corporation and Messrs. Burnham and Vaughan. At the conclusion of the trial a single brief was filed in behalf of both the intervener Petroleum Conversion Corporation and the interveners Burnham and Vaughan. Likewise said interveners jointly submitted proposed findings of fact and conclusions of law and left it to the Court to decide whether, if a recovery was to be had, judgment should be in favor of the corporation or Vaughan and Burnham. In other words, it was clearly satisfactory to these interveners if judgment were recovered either by Petroleum Conversion Corporation or by Messrs. Vaughan and Burnham on behalf of the Rinke Agency Subscribers.

10. Alleged members of the class were thereafter permitted to intervene and assert their claims, and after hearings with respect thereto, a decree dated and filed August 3, 1948 was entered awarding to the members of the class who had appeared, sums totaling $408,949.57 (constituting said $176,245.24 with interest from 1926). A copy of said decree is annexed hereto, made a part thereof, and marked Exhibit "D".

11. It is to be noted that the decree of August 3, 1948 in no way disposes of any of the claims of Petroleum Conversion Corporation. However, by a Notice of Appeal dated and filed Sept. 1, 1948, a copy of which is annexed hereto and marked Exhibit "E", William M. Duffy, Jr., as temporary receiver in bankruptcy of Petroleum Conversion Corporation, bankrupt, on behalf of said Petroleum Conversion Corporation, appealed from said decree of August 3, 1948 insofar as it dismissed on the merits the claims of Petroleum Conversion Corporation to the sum of $87,310.28, directed [fol. 10] judgment therefor in favor of the Rinke Agency Subscribers therein listed, and dismissed on the merits the claims of said corporation to certain shares of its stock. The Notice of Appeal was signed by J. Harlin O'Connell, Esq., as attorney, not for said temporary receiver, but for the intervener Petroleum Conversion Corporation.

12. Upon inquiry I have been informed and have found:

(1) that said William M. Duffy, Jr. was appointed receiver of Petroleum Conversion Corporation in its bankruptcy proceeding in the United States Court for the District of Delaware, on or about July 19, 1948;

(2) that no ancillary receivership was obtained in the Southern District of New York;

(3) that William M. Duffy, Jr., has at no time been substituted in place and stead of Petroleum Conversion Corporation and at no time secured leave to intervene in said action and is not a party thereto;

(4) that there had been no compliance with General Order #44 (11 U. S. C. A., §53). In fact, J. Harlin O'Connell, Esq. was disqualified from acting as attorney for the receiver by the specific provisions of said General Order, in that he had been the attorney for the bankrupt;

(5) that Petroleum Conversion Corporation did not authorize said Notice of Appeal dated Sept. 1, 1948 and in fact at no time has authorized any appeal to be taken from any of the decrees in said action;

(6) that, upon information and belief, on January 19, 1949 William M. Duffy, Jr., as trustee of Petroleum Conversion Corporation, bankrupt, reported to a meet-

ing of its creditors and to its Referee that this appeal should be abandoned, and an order in accordance with said report was duly made by the Referee. A copy thereof is annexed hereto and marked Exhibit "F".

13. The sources of my information and belief hereinabove referred to are conversations with James A. Vaughan, Esq., attorney for the Rinke Agency Subscribers and former attorney for Petroleum Conversion Corporation, and members of the office of J. Harlin O'Connell, Esq., who was [fol. 11] the attorney for Petroleum Conversion Corporation in said action.

Wherefore, it is respectfully requested that the annexed application be in all respects granted and that the motion of William M. Duffy, Jr., as trustee, etc., for an extension of time to file the record on appeal and docket the action herein be accordingly denied.

Solomon Kaufman.

Sworn to before me, this 2nd day of March, 1949. Robert A. Siebert, Notary Public in the State of New York, residing in Queens County. Queens Co. Clk's No. 2157. Reg. No. 162-S.-0. New York County Clerk's No. 1606. Commission Expires March 30, 1950.

[fol. 12] EXHIBIT "A" TO AFFIDAVIT

DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

In Equity. 86-3666

ALBERT G. DICKINSON, Plaintiff,

vs.

ARTHUR W. RINKE, FRED B. LLOYD, GENEVIEVE LLOYD, EARLE BEATTY, The Marine Midland Trust Company of New York, and Ernest B. Osborne, Henry C. Lovis, and A. R. L. Dohme, as a Stockholders' Committee of Petroleum Conversion Corporation, Defendants,

E. LEWIS BURNHAM and JAMES A. VAUGHAN, Interveners

INTERVENER'S ANSWER, COUNTERCLAIM AGAINST PLAINTIFF ARTHUR G. DICKINSON AND CROSS CLAIM AGAINST PETROLEUM CONVERSION CORPORATION

Interveners E. Lewis Burnham and James A. Vaughan in behalf of themselves and all the subscribers to certain agreements who paid money to Arthur W. Rinke, "Agent", thereunder, (hereinafter referred to as "Rinke Agency Agreements"), who are similarly situated, by their attorney, for their answer to the complaint herein, allege as follows:

* * * * * * *

As and for a Separate and Distinct Counterclaim Against Plaintiff Albert G. Dickinson and Defendant Fred B. Lloyd and Cross-Claim Against Petroleum Conversion Corporation, Interveners Herein Allege, upon Information and Belief, as Follows:

8. The ground upon which the jurisdiction of this Court depends in the diversity of citizenship between the parties and the amount in controversy herein exceeds $3,000. exclusive of interest and costs.

9. Plaintiff Dickinson is a resident of the State of Michigan and resides in the City of Grand Rapids in the County of Kent in said State.

10. Conversion is a corporation incorporated under the [fol. 13] laws of the State of Delaware with principal office

at No. 7 West 10th Street, Wilmington, Delaware. Intervener E. Lewis Burnham is a resident of the Commonwealth of Pennsylvania and resides in Berwyn, Chester County in said Commonwealth, and intervener James A. Vaughan is a resident of the State of Connecticut and resides in Greenwich, Fairfield County in said State.

11. Conversion was incorporated under the laws of the State of Delaware on March 25, 1926 with an authorized capital consisting of 1,200,000 shares of common stock having a par value of $5. per share and held its first organization meeting on December 14, 1926.

12. Conversion was organized as a step in the reorganization of Knox Process Corporation (hereinafter, for purposes of brevity, referred to as "Knox") a Delaware corporation.

13. Said Lloyd was identified with Knox as one of its directors and its President, and was in general charge of and dominated its affairs. Lloyd was also the President and a director of Conversion from its organization on December 14, 1926 and actively engaged in the management of its affairs until October 26, 1936 during which period he was in general charge of and dominated its affairs.

14. During the early part of 1925 the financial difficulties of Knox became acute. In addition to its outstanding bond issue in the principal amount of $1,000,000. ($980,000. principal amount of which had been sold) secured by first mortgage on its letters patent and certain of its real estate, Knox had become indebted to various persons and corporations for work and labor done and materials furnished in connection with the construction of its plant at Texas City, Texas, for which said persons and corporations held liens [fol. 14] amounting to approximately $168,000., exclusive of interest and charges.

15. Lloyd, as President of Knox and the person in charge of and dominating its affairs, took steps in the early part of 1925 to finance Knox and to bring about a reorganization thereof. Beginning in or about March 1925 various persons interested in Knox, desiring that its experimental and development work should not cease, undertook to make funds available for the purpose of paying its operating expenses and liquidating or acquiring the liens filed against its Texas

City plant. Due to its financial condition it was decided not to advance such funds directly to Knox, and accordingly a subscription agency in the name of "Arthur W. Rinke, Agent" (commonly known, and hereinafter referred to, as the "Rinke Agency"), was set up, to which funds were pledged from time to time from about March 1925 until about December 1926, pursuant to the terms of certain agency agreements. The aggregate amount subscribed and paid under said agreements was approximately $600,000.

16. During the time when said funds were being paid to the Rinke Agency a plan was evolved under the direction and domination of Lloyd for the organization of Conversion and for the acquisition by it of all the assets and property of Knox. As represented to the Rinke Agency subscribers and the Knox bondholders, this plan contemplated:

(a) Liquidation of the liens or the acquisition of the liens and the subsequent acquisition of the Knox property in Texas, against which the liens had been filed, in the name of the Rinke Agency with agency funds, and the transfer of the property so acquired to Conversion in exchange for 240,000 shares of its common stock to be issued pro rata to the Rinke Agency subscribers;

[fol. 15] (b) Foreclosure of the Knox mortgage and the subsequent acquisition by Conversion of the property pledged as security thereunder (consisting of patents and ninety-three acres of land in Texas), in consideration of 350,400 shares of its common stock to be issued pro rata to the bondholders who deposited Knox interim receipts with the Bondholders Protective Committee. $876,000 principal amount of Knox interim receipts were deposited with said committee and for each $1,000 interim receipt the bondholders were to receive 400 shares of Conversion common stock.

17. Had the plan outlined above been carried out the reorganization of Knox and the acquisition of its properties by Conversion would have been a simple matter. In addition to the 240,000 shares of Conversion to which the Rinke Agency subscribers would be entitled, 350,400 shares would be required to acquire the patents and the real estate at Texas City, Texas, not subject to mechanics' liens,

through the Bondholders Protective Committee. The remaining 609,600 shares of the authorized capital stock of Conversion could then be sold at par and the proceeds used to meet the financial requirements of Conversion.

18. A reorganization pursuant to such a plan would not enable plaintiff Albert G. Dickinson (hereinafter referred to as "Dickinson") and Lloyd to acquire bonus stock or realize any cash profits. Accordingly, Lloyd and Dickinson entered into a secret arrangement whereby they planned to secure illegal and unlawful profits for themselves, in fraud of the Rinke Agency subscribers, and with knowledge on the part of Dickinson of Lloyd's fiduciary relationship with said Knox and with said Rinke Agency subscribers.

19. The scheme that was in fact adopted by Dickinson and Lloyd in connection with the said lien claims, was to [fol. 16] have the property covered by such liens sold under foreclosure and Dickinson, in accordance with arrangements previously made between him and Lloyd, became the purchaser of the property at such mechanics' lien sale for the sum of $87,310.28. Both prior and subsequent to such purchase Lloyd repeatedly assured Dickinson that he (Dickinson) was fully protected not only with respect to repayment of the amount advanced or to be advanced by Dickinson for this purpose, with interest, but also with respect to profits which would be divided between them.

20. The transfer to Conversion of all assets formerly of Knox, including the property for which Dickinson advanced $87,310.28 upon foreclosure of said liens, took place at Conversion's organization meeting on December 14, 1926. Prior thereto Dickinson had demanded and received, without the knowledge, acquiescence or consent of the Rinke Agency subscribers, out of the Rinke Agency funds, the full sum of $87,310.28 advanced by him on or about January 21, 1926, together with six per cent interest thereon. Said payment was made in instalments from time to time under directions of Lloyd, who dominated the use of the funds in said Rinke Agency, and the final instalment, with interest, was completed on September 7, 1926. In addition to the payment of said $87,310.28 with interest, to Dickinson as aforesaid, Lloyd, in furtherance of their scheme, caused an additional $87,310.28 to be paid to himself and Dickinson out of said Rinke Agency funds. This additional or "profit" payment

was made in instalments and was completed on or before December 10, 1926.

21. No disclosure was made to Rinke Agency subscribers, including the above-named interveners, that said mechanics' lien claims or, upon foreclosure thereof, the property subject to such liens, could or would be, or had been, purchased [fol. 17] for any amount less than their full face amount. In an investigation beginning the latter part of 1938 it was discovered and disclosed that Dickinson, at said lien foreclosure sale on or about December 21, 1925, purchased for $87,310.28 the property of Knox against which said mechanics' lien claims had been filed; that said amount plus interest at six per cent was repaid to Dickinson with Rinke Agency funds on or before September 7, 1926; that an additional $87,310.28, upon demand by Dickinson and by direction of Lloyd, was also paid to Dickinson and Lloyd out of the Rinke Agency funds on or before December 10, 1926, four days prior to the organization meeting of Conversion which was held on December 14, 1926. Said latter amount of $87,310.28 so paid to Dickinson and Lloyd represents a secret, unlawful and fraudulent profit to Dickinson and Lloyd.

22. Either Conversion is entitled to recover from Dickinson and Lloyd jointly and severally the said illegal and fraudulent profit of $87,310.28, or the interveners herein, for and in behalf of themselves and all other similarly situated Rinke Agency subscribers, are entitled to recover said illegal and fraudulent profit of $87,310.28 from Dickinson and Lloyd jointly and severally.

23. Upwards of one hundred individuals, including the interveners named above, subscribed to the said Rinke Agency agreements in 1925 and 1926 and paid approximately $600,000 thereunder. Said interveners subscribed to certain of said Rinke Agency agreements and paid to said Rinke, Agent thereunder, as follows: E. Lewis Burnham $15,000. James A. Vaughan $24,250.

24. The interveners above named state of their own knowledge that they first learned of the Dickinson-Lloyd fraudulent transactions herein set forth, as a result of the investigation referred to in paragraph 21 hereof.

[fol. 18] Wherefore, the interveners herein demand:

(1) That the Plaintiff's Bill of Complaint be dismissed;

(2) That this Court find and decree that said plaintiff Albert G. Dickinson and defendant Lloyd shared an illegal and fraudulent profit of $87,310.28 in connection with the purchase by said Dickinson at the sale under foreclosure of mechanics' liens above referred to;

(3) That said Dickinson and defendant Lloyd be decreed to be liable, jointly and severally, to the above-named interveners by reason of said illegal and ffaudulent profit and that said plaintiff Dickinson and defendant Lloyd be decreed, jointly and severally, to pay said sum of $87,310.28, with interest thereon, to the above-named interveners;

(4) That the said interveners may recover the costs and disbursements in this action against said Dickinson and Lloyd, jointly and severally or such one of them as shall be adjudged liable therefor, and may have judgment therefor;

(5) That said interveners may have such other and further relief as the nature of the case may require and as to this Court may seem just and proper.

(Signed) E. Lewis Burnham, James A. Vaughan.

Verified by E. Lewis Burnham, December 30, 1943.
Verified by James A. Vaughan, December 31, 1943.

[fol. 19] EXHIBIT "B" TO AFFIDAVIT

DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

In Equity 86-366

ALBERT G. DICKINSON, Plaintiff

vs.

ARTHUR W. RINKE, FRED B. LLOYD, GENEVIEVE LLOYD, EARL BEATTY, The Marine Midland Trust Company of New York, and Ernest B. Osborne, Henry C. Lovis, and A. R. L. Dohme, as a stockholders' Committee of Petroleum Conversion Corporation, Defendants,

PETROLEUM CONVERSION CORPORATION, Intervener

INTERVENER'S ANSWER, COUNTERCLAIM AND CROSS-CLAIM

Intervener, Petrolum Conversion Corporation, (hereinafter for purposes of brevity referred to as "Conversion") by J. Harlin O'Connell its attorney, for its answer to the complaint herein, alleges as follows:

* * * * * * *

As and for a separate and distinct counterclaim against Plaintiff Albert G. Dickinson and a cross-claim against Defendant Fred B. Lloyd Conversion alleges, upon information and belief, as follows:

8. The subject matter of this counterclaim and cross-claim is the rescission and cancellation of said 244,041 shares of Conversion's common capital stock issued in three (3) certificates in the name of Lloyd, and the payment by plaintiff Dickinson and said Lloyd to Conversion of $87,310.28 representing a secret profit fraudulently acquired by them as hereinafter more particularly stated, with interest thereon.

9. Conversion was organized as a step in the reorganization of another corporation called Knox Process Corporation (herein for purposes of brevity referred to as "Knox") [fol. 20] which also was a Delaware corporation, and said Knox was organized as the result of the reorganization of another corporation called U. S. Gasoline Manufacturing

Corporation, a Virginia corporation. (The original authorized capitalization of Conversion consisted of 1,200,000 shares of common capital stock having a par value of $5.00 per share.)

10. The reorganization of U. S. Gasoline Manufacturing Corporation resulting in the organization of Knox was substantially completed in or about July, 1923. Said Knox was incorporated on May 15, 1923. Lloyd dominated such reorganization proceedings and became identified with Knox as one of its directors and its President, and continued in these capacities until Conversion was organized in 1926 and during that time he was in general charge of and dominated its affairs.

11. During the latter part of 1924 and early part of 1925 the financial difficulties of Knox became more acute and Lloyd, as its President and the person in charge of and dominating its affairs, took steps to bring about its reorganization. In connection therewith Lloyd entered into arrangements with the plaintiff Dickinson whereby they planned to secure for themselves certain secret and illegal profits and advantages in fraud of and at the expense of Conversion, the general nature of which were as hereinafter set forth.

12. Knox was indebted to various persons and corporations for work and labor done and materials furnished in connection with the construction of its plant at Texas City, Texas, for which said persons and corporations held mechanics' liens. In addition, Knox had outstanding a bond issue in the principal sum of $1,000,000.00 secured by mortgage covering certain patents owned by it and also covering certain real estate other than the real estate upon [fol. 21] which the said mechanics' lien claims existed.

13. On February 26, 1925, when the liens filed against its Texas City plant amounted to approximately $168,000.00, exclusive of interest or charges, the Board of Directors of Knox authorized delivery to plaintiff Dickinson, for the alleged use by Lloyd of Dickinson's credit standing and services, 20,600 shares of its $5.00 par value common stock or $103,000., upon acceptance of its proposals, and reserved an additional 34,600 shares all or any part thereof to be forthwith delivered to Dickinson when, as, and if he

paid out any sum for any of said liens or acquired any of said liens, the stock to be delivered at the rate of one share for each $5.00 so paid or invested by said Dickinson. Said intervener begs leave to refer to the original minutes of said meeting of said Board of Directors as if herein set forth at length.

14. The procedure that was planned by plaintiff Dickinson and Lloyd and in fact followed in connection with the said mechanics' lien claims, was to have the property covered by such liens sold under foreclosure and plaintiff Dickinson, in accordance with arrangements previously made, through Lloyd became the purchaser of the property at such mechanics' lien sale for the sum of $87,310.28 which amount had previously been arranged as the price to be offered for the property at said sale. Lloyd repeatedly assured Dickinson that he (Dickinson) was fully protected not only with respect to repayment of the amount advanced, or to be advanced, with interest, but also with respect to profits which would be divided between them. Said sum of $87,310.28 was thus advanced by plaintiff Dickinson on or about January 21, 1926.

15. Beginning in or about March 1925 various persons interested in Knox, desiring that its experimental and development work should not cease, undertook to make funds [fol. 22] available for such purposes. On account of the financial condition of Knox it was deemed undesirable to advance said funds directly to Knox, and accordingly a subscription agency, known as the "Arthur W. Rinke Agency," was set up, to which funds amounting to approximately $600,000. were pledged under subscription agreements and placed in the hands of said Arthur W. Rinke, Agent, from time to time until about December 1926.

16. During the time when such funds were being paid into the said Arthur W. Rinke Agency plans were completed by or under the direction of Lloyd for the organization of Conversion as a step in the reorganization of said Knox, and for the acquisition by Conversion of all the assets and property of Knox; and all of said assets and property were in fact transferred to Conversion in or about December 1926. In connection therewith, Lloyd and plaintiff Dickinson, in fraud of Conversion, and in fraud of the security

holders of Knox, and in fraud of the subscribers to the Arthur W. Rinke Agency, and with knowledge on the part of plaintiff Dickinson of Lloyd's fiduciary relationship with Knox, its security holders, said Rinke Agency subscribers, and Conversion, arranged to obtain secret and unlawful profits for themselves, and they did in fact, fraudulently, and in breach of said fiduciary relationship, obtain such secret and unlawful profits.

17. Prior to the transfer to Conversion of the assets formerly of Knox, plaintiff Dickinson had demanded and received, in violation of the resolution of the Board of Directors referred to in paragraph 13 hereof and without knowledge, acquiescence, or consent of the subscribers to said Arthur W. Rinke Agency, the full sum of $87,310.28 which he had advanced, as aforesaid, on or about January 21, 1926, together with interest thereon, said payment to him having been completed on or about September 7, 1926. [fol. 23] Said payment was made in installments on account from time to time during the period between January 21, 1926, and September 7, 1926, and said installment payments were made at all times upon and under the directions of Lloyd, who directed and dominated the use of the funds in said Arthur W. Rinke Agency. In addition to directing the payment of $87,310.28 to plaintiff Dickinson as aforesaid, with interest, in furtherance of their scheme caused further and additional payments aggregating $87,310.28 to be made to himself and plaintiff Dickinson out of said Arthur W. Rinke Agency funds.

18. The Board of Directors of Knox understood that the amount that would have to be paid for said mechanics' lien claims would be the full face amount of said claims, and authorized payment therefor on such basis. No disclosure was made to the Board of Directors of Knox, Knox bondholders or the subscribers of funds to the Arthur W. Rinke Agency, that said mechanics' lien claims or, upon foreclosure thereof, the property subject to said liens, could or would be purchased for any amount less than their full face amount. Conversion has learned, as hereinbefore set forth, that Lloyd in behalf of plaintiff Dickinson at foreclosure sale purchased for $87,310.28 the entire property covered by the said mechanics' lien claims; that said amount plus interest at 6% was repaid on or before September 7, 1926, to plaintiff Dickinson with funds subscribed to the

Arthur W. Rinke Agency; that an additional sum of $87,310.28, upon demand by plaintiff Dickinson and by direction of Lloyd, was paid to plaintiff Dickinson and Lloyd out of funds subscribed to the Arthur W. Rinke Agency, which latter payment was completed on December 10, 1926, four days prior to the organization meeting of Conversion which was held on December 14, 1926. Said latter amount of $87,310.28 so paid to plaintiff Dickinson and Lloyd represents a secret, unlawful and fraudulent profit to said plaintiff Dickinson and Lloyd.

[fol. 24] 19. Conversion was caused to be organized by and under the direction and control of plaintiff Dickinson and Lloyd. The incorporators and original directors thereof were dummies who acted in accordance with instructions and directions of Lloyd who dominated and controlled the organization and issuance of the stock of Conversion.

20. At the organization meeting of Conversion on December 14, 1926, Lloyd caused all of its authorized stock to be issued, purportedly in consideration of the property formerly held by Knox. The only persons lawfully entitled to receive Conversion stock were the bondholders of Knox and the persons who provided the funds that went into the Arthur W. Rinke Agency. In fact, at Conversion's organization its stock was issued as follows:

(a) 350,400 shares to Arthur W. Rinke as agent for the bondholders of Knox,

(b) 240,000 shares to Arthur W. Rinke as agent for the subscribers to said Agency,

(c) 140,000 shares to Lloyd but later turned back to Conversion as treasury stock, and

(d) the remaining 469,600 shares were issued without any valid or lawful consideration.

21. At or about the time plaintiff Dickinson acquired the property of said Knox that was sold under foreclosure of said mechanics' lien claims, Arthur W. Rinke, as agent for the Knox bondholders and as agent for the subscribers to said Agency, acquired title to the patents and other property of Knox not included in the sale under the foreclosure of the mechanics' lien claims, said patents and other property having been acquired by Rinke at a sale under a fore-

closure of the above mentioned mortgage securing the bonds of Knox.

22. The transaction by which Conversion upon its organi- [fol. 25] zation acquired the property formerly of Knox took the form of a transfer to it by plaintiff Dickinson of the property acquired by him, as aforesaid, for 609,600 shares and a transfer to it by said Rinke of the property acquired by him, as aforesaid, for 590,400 shares of Conversion common stock. The 609,600 shares directed to be issued to plaintiff Dickinson, as aforesaid, or to his nominee, included the 140,000 shares which are hereinabove recited as having been issued to Lloyd and were subsequently returned to Conversion as treasury stock, leaving 469,600 shares directed to be issued to plaintiff Dickinson, or his nominee. The issuance of said 469,600 shares of stock however, was illegal and void for the reasons hereinabove and hereinafter set forth. There was no consideration whatsoever for the issuance of said 469,600 shares. Dickinson had been fully repaid the sum of $87,310.28 which he had advanced in January, 1926, together with interest on his said advance; and Dickinson had disregarded or rejected the arrangement with the Board of Directors of Knox, hereinbove referred to, for compensation for the alleged use by Lloyd of his credit standing. Under those circumstances, Conversion was the equitable owner of the property to which Dickinson held the legal title, and he was bound in equity and in good conscience to transfer said property to Conversion upon its organization. As hereinabove set forth plaintiff Dickinson and Lloyd had received a secret, unlawful and fraudulent profit of $87,310.28 in connection with the transaction. Moreover, plaintiff Dickinson's connection with the transaction was affected by his fraud in his arrangements with said Lloyd, by which Lloyd was to receive, secretly, a part of the profits which plaintiff Dickinson expected to obtain from the transaction, said Lloyd then, to the knowledge of plaintiff Dickinson, having been President and director of Knox and in charge of its affairs. The issuance of said [fol. 26] 609,600 shares or 469,600 shares was also illegal and void because Conversion's Board of Directors made no separate valuation of the property for which said 609,600 shares or 469,600 shares were purported to be issued, and if they had made a valuation thereof, equal to the par value of the stock so pretended to be issued, such valuation would

have been grossly excessive and out of all proportion to the fair or reasonable value of said property.

23. The arrangements between plaintiff Dickinson and Lloyd referred to above by which Lloyd was to participate with Dickinson in profits arising from the financial difficulties of Knox and the organization of Conversion began during or prior to December, 1924. Under those arrangements Dickinson and Lloyd shared in the profits as partners as aforesaid, although Dickinson at all times knew of Lloyd's fiduciary position.

24. Lloyd continued to dominate and control the Board of Directors of Conversion until June, 1936. About that time Lloyd went abroad, returning in October, 1936. Upon Lloyd's return in October, 1936, following an investigation by Conversion's Board of Directors, demand was made upon him for a complete disclosure of all facts having a bearing upon any liability he might have to Conversion. Lloyd made some disclosures, but on October 26, 1936, disappeared and has not been heard from since.

25. As a result of said investigation and demands upon Lloyd, Conversion came into possession of certificates representing 244,041 shares of its originally issued common stock, evidenced by Certificate No. 1910 for 2,389 shares, all issued in the name of Lloyd, unendorsed. These certificates were found to form a part of the block of 469,600 shares hereinbefore referred to. Conversion alleges that said certificates are its property and free from the claim of any other [fol. 27] person or persons. Conversion alleges that the issuance of said 244,041 shares was void for want of consideration and because of the fraud of plaintiff Dickinson and Lloyd, and that said 244,041 shares should be cancelled.

26. Conversion further avers that it is entitled to an accounting from plaintiff Dickinson and Lloyd for the above mentioned secret and fraudulent profit of $87,310.28 and a decree that said Dickinson and Lloyd are, jointly and severally, liable to it for the repayment of said sum to it, with interest thereon, and a decree against said Dickinson and Lloyd directing said payment.

Wherefore, Conversion demands:

(1) That the plaintiff's Bill of Complaint be dismissed;

(2) That this Court find and decree that said plaintiff Dickinson and defendant Fred B. Lloyd shared in an illegal and fraudulent profit of $87,310.28 in connection with the purchase by said Dickinson at the sale referred to above under foreclosure of mechanics' liens; that said Dickinson and Lloyd be decreed to be liable, jointly and severally, to Conversion by reason of said illegal and fraudulent profit, and that said Dickinson and Lloyd be decreed, jointly and severally, to pay said sum of $87,310.28 with interest thereon, to Conversion;

3. That this Court find and decree that the three (3) certificates hereinabove described representing an aggregate of 244,041 shares of Conversion's common capital stock were issued fraudulently and illegally and that Conversion be authorized, empowered and directed to rescind and cancel same.

(4) That Conversion may recover the costs and disbursements of its action against plaintiff Dickinson and [fol. 28] Lloyd, or such one of them as shall be adjudged liable therefor, and may have judgment therefor.

(5) That Conversion may have such other and further relief as the nature of the case may require and as to this Court may seem just and proper.

Petroleum Conversion Corporation, by (Signed) Walter J. Schwenk, Secretary.

Verified by Walter J. Schwenk, Secretary, January 3, 1944.

[fol. 29] EXHIBIT "C" TO AFFIDAVIT

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

In Equity 86-366

ALBERT G. DICKINSON, Plaintiff

against

ARTHUR W. RINKE, JAMES F. EGAN, Public Administrator of the County of New York, as Administrator of the Goods, Chattels and Credits of Fred B. Lloyd, deceased, Genevieve Lloyd, Earl Beatty, the Marine Midland Trust Company of New York, and Ernest B. Osborne, Henry C. Lovis and A. R. L. Dohme, as a Stockholders' Committee of Petroleum Conversion Corporation, Defendants.

PETROLEUM CONVERSION CORPORATION, E. LEWIS BURNHAM and JAMES A. VAUGHAN, Interveners.

DECREE—April 10, 1947

The issues in this action having been brought on for trial before Honorable Vincent L. Leibell, U. S. D. J., without a Jury at the United States District Court for the Southern District of New York held at the U. S. Court House, Foley Square, New York, N. Y. on the 20th, 21st, 22nd, 24th, 28th, 29th and 30th days of November, 1944, the 1st, 4th, 7th, 8th, 11th, 12th, 13th, 14th, 15th, 27th and 28th days of December, 1944, the 4th, 5th, 6th and 11th days of January, 1945, and the 5th day of February, 1945, and plaintiff's cause of action against defendants Arthur W. Rinke, Earl Beatty and The Marine Midland Trust Company of New York having been discontinued and the defendant Gene-[fol. 30] vieve Lloyd not having been served with process herein and all other parties having appeared by counsel, and the allegations and proofs on the part of all such parties who appeared having been fully heard and considered, the Court having filed its decision and opinion herein on the 11th day of October, 1946, and having filed its Findings of Fact and Conclusions of Law on the 17th day of October, 1946, and the Court having thereafter amended its Conclusions of Law IX and X on motion of the

interveners Burnham and Vaughan on the 14th day of February, 1947,

Now on motion of J. Harlin O'Connell, attorney for defendant A. R. L. Dohme and intervener Petroleum Conversion Corporation, and James A. Vaughan, attorney for E. Lewis Burnham and James A. Vaughan interveners, it is

Ordered, adjudged and decreed, as follows:

1. That plaintiff's claim to an interest in 244,041 shares of the common stock of intervener Petroleum Conversion Corporation represented by certificates numbered 1910, 1911 and 1912, which said certificates are now on deposit with the Clerk of this Court, be and the same hereby is dismissed on the merits;

2. That plaintiff's claims to an interest in $85,000.00 of Knox Process Corporation bond receipts, in $33,500 par value Rinke Agency receipts and in 9,900 shares of U. S. Gasoline Manufacturing Corporation common stock be and the same hereby are dismissed on the merits;

3. That plaintiff's claim to an interest in 20,796 shares of common stock of intervener Petroleum Conversion Corporation formerly located in the safe deposit box of Fred B. Lloyd, deceased, at The Marine Midland Trust Company of New York, N.Y. and now [fol. 31] in the possession of defendant James F. Egan, Public Administrator of the County of New York, as Administrator of the Goods, Chattels and Credits of Fred B. Lloyd, deceased, be and the same hereby is dismissed on the merits;

4. That plaintiff's claim for an accounting against intervener Petroleum Conversion Corporation has been considered and that nothing has been found due plaintiff;

5. That the intervener, Petroleum Conversion Corporation has no right, title or interest in or to the aforementioned three certificates numbered 1910, 1911 and 1912 for 244,041 shares of stock of the Petroleum Conversion Corporation now on deposit with the Clerk of this Court and the corporation's claim thereto is dismissed on the merits, and that said certificates of stock be delivered by the Clerk of this Court to the

Petroleum Conversion Corporation and that said corporation shall issue new certificates in the proper number and amount to the stockholders of U. S. Gasoline Manufacturing Corporation, described in the agreement between Fred B. Lloyd and U. S. Gasoline Manufacturing Corporation dated May 22, 1923, and listed in the Lloyd deed of trust, dated April 9, 1928, or to their legal representatives and assigns; that any shares of stock which for any reason shall not be distributed to the U. S. Gasoline Manufacturing Corporation stockholders entitled thereto within six months from the date of the entry of this decree, unless such time be extended by an order of this Court, shall be redeposited with the Clerk of this Court by intervener [fol. 32] Petroleum Conversion Corporation, subject to the further order of this Court as to the final disposition of such undistributed shares; and that this Court retain jurisdiction of this action for the purpose of supervising and controlling the distribution of said shares to the U. S. Gasoline Manufacturing Corporation stockholders, or to their legal representatives and assigns, entitled thereto and for the purpose of determining the final disposition of such undistributed shares as may hereafter be redeposited with the Clerk of this Court as hereinabove provided;

6. That the claim of intervener Petroleum Conversion Corporation to 20,796 shares of Petroleum Conversion Corporation common stock now in possession of the Public Administrator of the County of New York is sustained and allowed to the extent of 8,200 shares represented by certificates numbered 0-13696, 0-2432, 0-2433, 1224, 3283, 0-10891, 10892, 10893, 10894, 10895, 10896, 10897, 10898, 3277, 3278, 0-10839, 10840, 10841, 10842, 10843, 0-10844 to 0-10878 inclusive and 0-10789 to 10890 inclusive, 3279, 3280 and 3229 and that the claim of intervener Petroleum Conversion Corporation for the delivery and cancellation of the remaining balance of said 20,796 shares, to wit: 12,596 shares, be and the same hereby is dismissed on the merits;

7. That defendant James F. Egan, Public Administrator of the County of New York, as Administrator of the Goods, Chattels, and Credits of Fred B. Lloyd,

[fol. 33] deceased, be and he hereby is directed to deliver to intervener Petroleum Conversion Corporation 8,200 shares of the common stock of Petroleum Conversion Corporation represented by certificates numbered 0-13696, 0-2432, 0-2433, 1224, 3283, 0-10891, 10892, 10893, 10894, 10895, 10896, 10897, 10898, 3277, 3278, 0-10839, 10840, 10841, 10842, 10843, 0-10844 to 0-10878 inclusive and 0-10789 to 10890 inclusive, 3279, 3280 and 3229;

8. That the claim of intervener Petroleum Conversion Corporation for a rescission on the ground of fraud of the settlement agreement of January 6, 1938 entered into between intervener Petroleum Conversion Corporation and plaintiff Albert G. Dickinson and his son H. Randel Dickinson, is dismissed for the reason that said claim was not among the issues tried in this case;

9. That the claim of the defendant James F. Egan, Public Administrator of the County of New York, as Administrator of the Good-, Chattels and Credits of Fred B. Lloyd, deceased, to the 244,041 shares of common stock of intervener Petroleum Conversion Corporation represented by certificates numbered 1910, 1911 and 1912, now on deposit with the Clerk of this Court, be and the same hereby is dismissed on the merits;

10. That the claim of the defendant James F. Egan, Public Administrator of the County of New Yor' as Administrator of the Good-, Chattels and Credits of [fol. 34] Fred B. Lloyd, deceased, to $85,000 par value of Knox Process Corporation bond receipts, to $33,500 par value of Rinke Agency receipts and to 9,900 shares of common stock of U. S. Gasoline Manufacturing Corporation, be and the same hereby is dismissed on the merits;

11. That the claim of James F. Egan, Public Administrator of the County of New York, as Administrator of the Goods, Chattels and Credits of Fred B. Lloyd, deceased, to 20,796 shares of common stock of intervener Petroleum Conversion Corporation formerly in the safe deposit box of Fred B. Lloyd, deceased, at The Marine Midland Trust Company, New York, New

York, and now in the possession of said Public Administrator, be and the same hereby is allowed and sustained to the extent of 12,596 shares represented by certificates numbered 0-15434, 0-14142, 3663, 3664, 3665, 3666, 3668, 3689, 0-980, 981, 989, 1149, 1150, 1853, 3251, 3253, 3254, 975, 976, 977, 0-12448, 10701, 10702, 0-14552, 0-11948, 0-3386, 0-11619, 0-14535, 0-14323, 0-13491, 0-12906, 0-13994, 13995, 13996, 13997, 13998, 13999, 0-13375, 0-6137, 0-14225, 0-14096, 3002, 3003, 3005, 3010, 0-6788, 0-13481, 0-13930, 4374, 0-3780, 0-12887, 0-6752, 13713, 0-6753, 0-6966, 0-13929, 0-10932, 0-13083, 13085, 16377, 16378, 16379, 16380, 16391, 16382 and 13084, and that the claim of James F. Egan, Public Administrator of the County of New York, as Administrator of the Goods, Chattels and Credits of Fred B. Lloyd, deceased, [fol. 35] to the balance of said 20,796 shares to wit, 8,200 shares, be and the same hereby is dismissed on the merits;

12. That intervener Petroleum Conversion Corporation is not entitled to recover the sum of $87,310.28 from plaintiff, Albert G. Dickinson, and its claim thereto is dismissed on the merits;

13. That the claim of interveners, James A. Vaughan and E. Lewis Burnham, in behalf of themselves and all other Rinke Agency subscribers, against plaintiff, Albert G. Dickinson and against defendant James F. Egan, Public Administrator of the County of New York, as Administrator of the Goods, Chattels and Credits of Fred B. Lloyd, deceased, jointly and severally, for the recovery of $174,620.56 together with the sum of $1,624.68 with interest as follows:

On $10,000.00 from January 25, 1926;
On $10,000.00 from March 8, 1926;
On $10,000.00 from March 22, 1926;
On $10,000.00 from April 6, 1926;
On $..,000.00 from April 20, 1926;
On $10,000.00 from May 13, 1926;
On $20,000.00 from August 24, 1926;
On $5,310.28 from September 7, 1926;
[fol. 36] On $1,624.68 from September 7, 1926;
On $15,000.00 from September 14, 1926;
On $15,000.00 from September 28, 1926;

On $30,000.00 from October 11, 1926;
On $27,310.28 from December 10, 1926;

fraudulently paid to said Dickinson and Lloyd out of funds of the Rinke Agency between January 25th and December 10, 1926, is sustained;

14. That immediately after the entry of this decree notice in writing be given by interveners Burnham and Vaughan to all members of the group of Rinke Agency subscribers, and Rinke Agency receipt holders who surrendered their receipts to the Corporation Trust Company in November, 1937 and thereafter, or to their respective transferees, nominees, assigns and legal representatives, to apply to intervene herein and assert their respective claims against plaintiff, Albert G. Dickinson, and defendant James F. Egan, Public Administrator of the County of New York, as Administrator of the Goods, Chattels and Credits of Fred B. Lloyd, deceased, based on the fraudulent payment to said Dickinson and Lloyd of the sum of $174,620.56 and the sum of $1,624.68 (interest) between January 25th and December 10, 1926; that said notice shall be sent [fol. 37] by registered mail postpaid to each Rinke Agency subscriber and receipt holder at the address given at the time of the surrender of his or her Rinke Agency receipt to the Corporation Trust Company or at such other or better address which may appear in the records of intervener Petroleum Conversion or the records of said Rinke Agency available to said interveners or otherwise available; said notice shall fully advise each Rinke Agency subscriber and receipt holder of his or her rights under this decree and shall enclose a form of claim and application to intervene herein and to assert said claim, in accordance with the provisions of this decree, to be signed by each Rinke Agency subscriber and receipt holder, or their respective transferees, nominees, assigns and legal representatives, and said notice shall set forth instructions to file said claim and application to intervene herein with the Clerk of this Court within four months from the date of the entry of this decree; that after the expiration of said four months' period a hearing be held in this Court on notice to plaintiff Albert G. Dickinson, defendant James F. Egan, Public Administrator of the

County of New York, as Administrator of the Goods, Chattels and Credits of Fred B. Lloyd, deceased, intervener Petroleum Conversion Corporation and interveners E. Lewis Burnham and James A. Vaughan, and such Rinke Agency subscribers and receipt holders as shall have filed claims and applied for leave to intervene herein as hereinabove provided, at which time this Court will pass upon said claims and will direct the [fol. 38] entry of judgment against plaintiff Albert G. Dickinson and James F. Egan, Public Administrator of the County of New York, as Administrator of the Goods, Chattels and Credits of Fred B. Lloyd, deceased, in favor of those Rinke Agency subscribers and receipt holders filing claims whose claims are allowed by this Court; and that this Court retain jurisdiction of this action for the purpose of passing upon said claims in the manner hereinabove provided;

15. That the taxation of costs in this case and the entry of judgment therefor, be deferred until the entry of judgment in respect to the matters hereinabove reserved for the future determination of this Court;

16. That the claims of the interveners, James A. Vaughan and E. Lewis Burnham, in behalf of themselves and all other Rinke Agency subscribers against plaintiff Albert G. Dickinson and defendant James F. Egan, Public Administrator of the County of New York, as Administrator of the Goods, Chattels and Credits of Fred B. Lloyd, deceased, for the recovery of the sum of $174,620.56 and the sum of $1,624.68 with interest are not barred by any Statute of Limitations, or by laches.

Dated, New York, N.Y. April 10, 1947.

(Sgd.) Vincent L. Leibell, United States District Judge.

[fol. 39] EXHIBIT "D" TO AFFIDAVIT

In Equity 86-366

UNITED STATES DISTRICT COURT,
Southern District of New York:

ALBERT G. DICKINSON, Plaintiff,

against

ARTHUR W. RINKE, JAMES F. EGAN, Public Administrator of the County of New York, as Administrator of the Goods, Chattels and Credits of Fred B. Lloyd, deceased, Genevieve Lloyd, Earl Beatty, The Marine Midland Trust Company of New York, and Ernest B. Osborne, Henry C. Lovis and A. R. L. Dohme, as a Stockholders' Committee of Petroleum Conversion Corporation, Defendants

PETROLEUM CONVERSION CORPORATION, E. LEWIS BURNHAM and JAMES A. VAUGHAN, Interveners

FINAL DECREE

The decree herein dated the 10th day of April, 1947, in part provides:

"13. That the claim of interveners, James A. Vaughan and E. Lewis Burnham, in behalf of themselves and all other Rinke Agency subscribers, against plaintiff, Albert G. Dickinson and against defendant James F. Egan, Public Administrator of the County of New York, as Administrator of the Goods, Chattels and Credits of Fred B. Lloyd, deceased, jointly and severally, for the recovery of $174,620.56 together with the sum of $1,624.68 with interest as follows:

On $10,000.00 from January 25, 1926;
On $10,000.00 from March 8, 1926;
On $10,000.00 from March 22, 1926;
[fol. 40] On $10,000.00 from April 6, 1926;
On $12,000.0 from April 20, 1926;
On $10,000.00 from May 13, 1926;
On $20,000.00 from August 24, 1926;
On $5,310.28 from September 7, 1926;
On $1,624.68 from September 7, 1926;

On $15,000.00 from September 14, 1926;
On $15,000.00 from September 28, 1926;
On $30,000.00 from October 11, 1926;
On $27,310.28 from December 10, 1926;

fraudulently paid to said Dickinson and Lloyd out of funds of the Rinke Agency between January 25th and December 10, 1926, is sustained:

"14. That immediately after the entry of this decree notice in writing be given by interveners Burnham and Vaughan to all members of the group of Rinke Agency subscribers, and Rinke Agency receipt holders who surrendered their receipts to the Corporation Trust Company in November, 1937 and thereafter, or to their respective transferees, nominees, assigns and legal representatives, to apply to intervene herein and assert their respective claims against Plaintiff, Albert G. Dickinson, and Defendant James F. Egan, Public Administrator of the County of New York, as Administrator of the Goods, Chattels and Credits of Fred B. Lloyd, deceased, based on the fraudulent payment to said Dickinson and Lloyd of the sum of $174,620.56 and the sum of $1,624.68 (interest) between January 25th and December 10, 1926; that said notice shall be sent by registered mail postpaid to each Rinke Agency subscriber and receipt holder at the address given at the time of the surrender of his or her Rinke Agency receipt to the Corporation Trust Company or at such other or better address which may appear in the records of intervener Petroleum Conver- [fol. 41] sion Corporation or the records of said Rinke Agency available to said interveners or otherwise available; said notice shall fully advise each Rinke Agency subscriber and receipt holder of his or her rights under this decree and shall enclose a form of claim and application to intervene herein and to assert said claim, in accordance with the provisions of this decree, to be signed by each Rinke Agency subscriber and receipt holder, or their respective transferees, nominees, assigns and legal representatives, and said notice shall set forth instructions to file said claim and application to intervene herein with the Clerk of this Court within four months from the date of the entry of this decree;

that after the expiration of said four months' period a hearing be held in this Court on notice to Plaintiff Albert G. Dickinson, Defendant James F. Egan, Public Administrator of the County of New York, as Administrator of the Goods, Chattels and Credits of Fred B. Lloyd, deceased, Intervener Petroleum Conversion Corporation and Interveners E. Lewis Burnham and James A. Vaughan, and such Rinke Agency subscribers and receipt holders as shall have filed claims and applied for leave to intervene herein as hereinabove provided, at which time this Court will pass upon said claims and will direct the entry of judgment against Plaintiff Albert G. Dickinson and Defendant James F. Egan, Public Administrator of the County of New York, as Administrator of the Goods, Chattels and Credits of Fred B. Lloyd, deceased, in favor of those Rinke Agency subscribers and receipt holders filing claims whose claims are allowed by this Court; and that this Court retain jurisdiction of this action for the purpose of passing upon said claims in the manner hereinabove provided;

"15. That the taxation of costs in this case and the entry of judgment therefor, be deferred until the entry [fol. 42] of judgment in respect to the matters hereinabove reserved for the future determination of this Court;"

and notice in writing having been given by Interveners E. Lewis Burnham and James A. Vaughan to each of the members of the group of Rinke Agency subscribers, and Rinke Agency receipt holders who surrendered their receipts to the Corporation Trust Company in November, 1937 and thereafter, and/or to their known transferees, nominees, distributees, assigns and legal representatives respectively, to apply to intervene herein and assert their respective claims as provided in said decree dated the 10th day of April, 1947, and certain Rinke Agency subscribers and receipt holders, or their respective transferees, nominees, distributees, assigns and legal representatives hereinafter listed having applied to intervene and claim herein and having prosecuted their respective claims in proceedings before the Honorable Vincent L. Leibell, U. S. District Judge, without a Jury, in the U. S. District Court for the Southern District of New York, at the U. S. Court

House, Foley Square, New York, N. Y. on various dates between the 19th day of January, 1948 and the 2nd day of March, 1948, in which proceedings testimony and exhibits were received, and the Court having filed its decision and opinion and its Findings of Fact and Conclusions of Law herein dated the 24th day of July, 1948, and the issues reserved in the decree herein dated the 10th day of April, 1947 having been determined; and the interest on the items totalling $176,245.24, mentioned in paragraph 13 of the decree of April 10, 1947, having been calculated from the dates mentioned therein to August 3, 1948 as $252,704.33, resulting in a total sum of $408,949.57, of which said total sum the interveners hereinafter listed are entitled pro rata to the amounts for which they are separately awarded judgment in paragraph 1 of this decree;

Now, on motion of Wickes, Riddell, Bloomer, Jacobi & McGuire, attorneys for Cornelius R. Agnew, Executor of the Estate of George B. Agnew, deceased, and Thomas R. Williams, Executor of the Estate of Robert H. Neilson, deceased, claimants herein; on motion of Satterlee, War- [fol. 43] field & Stephens, attorneys for Marshall P. Slade, claimant herein; on motion of John C. Sebright, attorney for Edna D. Goodrich, Administratrix of the Estate of Andrew M. Outerson, claimant herein, and on motion of James A. Vaughan, attorney for E. Lewis Burnham and James A. Vaughan, interveners, and attorney for each of the other intervener-claimants herein listed below (except Jerome I. Golinko proof of whose claim herein was received subject to certain general objections), it is,

Ordered, adjudged and decreed:

1. That each intervener-claimant hereinafter listed recover of plaintiff, Albert G. Dickinson, and of defendant, Francis J. Mulligan, the Public Administrator of the County of New York, as Administrator of the Good-, Chattels and Credits of Fred B. Lloyd, deceased, jointly and severally, the amounts set opposite their respective names, and that they have execution therefor, as follows:—

Cornelius R. Agnew, Executor of the Estate of George B. Agnew, deceased	$41,768.70
Walter J. Bagshaw	7,309.53

William B. Long and Edward C. Bradlee, Trustees under Bayley-Long Indenture of Trust dated December 14, 1939	2,610.55
Walter S. Becker	1,461.91
Norman A. Boyd	2,610.55
Clyde W. Buhoup	313.26
E. Lewis Burnham	15,663.28
Lewis A. Wald	313.26
Industrial Trust Company, of Providence, Rhode Island, as surviving Executor of the Will of George H. Cahoone, and Industrial Trust Company and Edna Hamilton Cahoone as Trustees of the Will of George H. Cahoone, deceased	10,443.19
Atherton Clark	7,048.48
George Morrison Coates, Executor of the Estate of Joseph H. Coates, deceased	2,610.55
Agnes Cooke	2,610.55
[fol. 44] Franklin Dexter, Executor of the Estate of Gordon Dexter, deceased	10,442.19
Arthur J. Dickey	1,566.33
Alfred R. L. Dohme	26,105.47
Helen Prentiss Dunn	1,044.22
John Walter Dunn	1,044.22
John Walter Dunn and Helen Prentiss Dunn, heirs and next of kin of Helen Margaret Dunn, deceased, sole legatee of Walter M. McFarland, deceased	2,088.44
Roland I. Dunn, a distributee of the Estate of Homer A. Dunn, deceased	31,326.57
Charles W. Fairfax	1,044.22
John J. Friesleben	1,044.22
Charles B. Going	1,044.22
Jerome I. Golinko	104.42
Mrs. Anna Haile	208.84
Bert R. Haile	208.84
George Edward Haufler, Executor of the Estate of Elizabeth C. Haufler, deceased, transferee of George F. Haufler	522.11
Fidelity-Philadelphia Trust Company Executor of the Estate of S. Cooke Ingraham, deceased, transferee, inter alia.	1,566.33
Charles I. Jackson, a transferee of Edgar L. Jackson in the amount of $2,000.00	2,088.44

Harvey W. Jackson, a transferee of Edgar L. Jackson in the amount of $2,000.00	2,088.44
Evelyn J. Mitchell, a transferee of Edgar L. Jackson in the amount of $500.00	522.11
Morris W. Johnson	156.63
Smith Keighley	783.17
Elmira M. Deighton, Executor and Trustee u/w of William C. Keyworth, deceased	313.26
Maud M. Killeen, transferee of Louis W. Killeen, deceased	3,132.65
[fol. 45] Mary P Koppitz, Executor of the Estate of Carl G. Koppitz, deceased	12,021.05
Margery J. Lord	2,610.55
Claude H. Edgerton, Dorothy N. Edgerton and Ruth Nichols, Executors of the Estate of Henry C. Lovis, deceased	7,831.64
Claude H. Edgerton, Dorothy N. Edgerton and Ruth Nichols, Executors of the Estate of Henry C. Lovis, deceased, a transferee of Robert J. Seabury in the amount of $625.	652.64
Dorothy N. Edgerton and Ruth Nichols, Executors of the Estate of Evelyn A. Nichols, deceased, a transferee of Robert J. Seabury in the amount of $625	652.64
Dorothy N. Edgerton and Ruth Nichols, sole legatees under the Last Will and Testament of Gertrude H. Leach, deceased, a transferee of Robert J. Seabury in the amount of $625.	652.63
Genevieve Peoples McFern, transferee of Leon E. McFern	1,044.22
John A. McKennan	1,044.22
Susan R. Macy, Executor of the Estate of Clarence A. Macy, deceased and transferee of Clarence A. Macy	522.11
Lewis S. Milner	1,044.22
Thomas R. Williams, Executor of the Estate of Robert H. Neilson, deceased	2,088.44
Edna D. Goodrich (formerly Edna D. Outerson) administratrix and sole heir of the Estate of Andrew M. Outerson, deceased	1,566.33
Christopher L. Perison, Executor of the Estate of Walter Peirson, deceased	20,884.38

The Morristown Memorial Hospital, a transferee of Charles B. Reynolds in the amount of $14,000.00	14,619.06
John D. Richards	1,044.22
Ruth Richey Rouzie, sole legatee and executrix of the Estate of William E. Richey	522.11
John P. Roger	104.42
Max E. Sanders	522.11
Homer E. Sargent	3,132.66
[fol. 46] Industrial Trust Company of Providence, Rhode Island, Executor of and Trustee under Will of William P. Sargent, deceased	20,884.38
Frank Senior	208.84
Rhode Island Hospital Trust Co., Trustee under the Will of George F. Siddall, deceased	1,566.33
Marshall P. Slade	10,442.19
Bruce M. Stannard	2,610.55
Edwin A. Stevens, Jr.	7,518.37
Winton H. Church, one of the Executors of the Will of Thomas R. Stone, deceased, Assignee of Nettie Stone	104.42
Winton H. Church, one of the Executors of the Will of Thomas R. Stone, deceased	939.80
Harmon W. Tanner, transferee of Lewis H. Tanner	5,221.10
Charles E. Titchener	11,486.41
Charles E. Titchener, assignee of F. L. Titchener	5,221.10
Brooklyn Trust Company, Executor of the Estate of Winthrop M. Tuttle, deceased	28,193.91
The Travelers Bank and Trust Co., Trustee under "The Charles Coit Tyler Annuity Trust"	15,663.28
James A. Vaughan	25,322.31
William E. Wardle	522.11
Ella Keats Whiting, Fanny Whiting Myer, and John K. Whiting, Jr., Executors of the Estate of John K. Whiting, deceased	14,619.06
W. Howard Yeager	46.99
Efrem Zimbalist	1,044.22
Harry B. Zimmerman	1,566.33

2. That each Rinke Agency subscriber, has legal representatives, successors and assigns, to whom notice of the

right to intervene in this proceeding was mailed pursuant to the order of this Court and who did not apply to intervene and prosecute his claim herein, is barred from hereafter asserting any claim against the plaintiff, [fol. 47] Albert G. Dickinson, or the Estate of Fred B. Lloyd, deceased, based on any Rinke Agency subscription.

3. That the issues reserved in the decree herein dated the 10th day of April, 1947, having been determined by the Court in its decision and opinion and its Findings of Fact and Conclusions of Law filed herein dated the 24th day of July, 1948, the said decree is hereby made final.

4. That Interveners E. Lewis Burnham and James A. Vaughan are entitled to a single bill of costs and execution therefor against Plaintiff Albert G. Dickinson and Defendant Francis J. Mulligan, the Public Administrator of the County of New York, as the Administrator of the Goods, Chattels and Credits of Fred B. Lloyd, deceased, jointly and severally.

Dated, New York, N. Y., August 3rd, 1948.

(Sgd.) Vincent L. Leibell, United States District Judge.

[fol. 48] EXHIBIT "E" TO AFFIDAVIT

E-86-366

UNITED STATES DISTRICT COURT,
Southern District of New York:

ALBERT G. DICKINSON, Plaintiff,

against

ARTHUR W. RINKE, JAMES F. EGAN, Public Administrator of the County of New York, as Administrator of the Goods, Chattels and Credits of Fred B. Lloyd, deceased, Genevieve Lloyd, Earl Beatty, the Marine Midland Trust Company of New York, and Ernest B. Osborne, Henry C. Lovis and A. R. L. Dohme, as a Stockholders' Committee of Petroleum Conversion Corporation, Defendants.

PETROLEUM CONVERSION CORPORATION, E. LEWIS BURNHAM and JAMES A. VAUGHAN, Interveners

NOTICE OF APPEAL

SIRS:

Please Take Notice: that William M. Duffy, Jr., as temporary receiver in bankruptcy of Petroleum Conversion Corporation, bankrupt, on behalf of said Petroleum Conversion Corporation, an intervener herein, hereby appeals, upon the law and upon the facts, to the United States Circuit Court of Appeals for the Second Circuit as follows:

From so much of a decree entered in the above entitled action on August 3, 1948, as is set forth in paragraphs "1" and "3" thereof:

1. In so far as it dismisses on the merits the claim of intervener, Petroleum Conversion Corporation to the sum [fol. 49] of $87,310.28 and directs judgment therefore in favor of the several Rinke Agency subscribers therein listed.

2. And in so far as it dismisses on the merits the claim of intervener, Petroleum Conversion Corporation, to 244,041 shares of its common stock, represented by certificates numbered 1910, 1911, 1912 and directs the issuance of

said shares to stockholders of United States Gasoline Manufacturing Corporation.

3. And in so far as it dismisses on the merits the claim of intervener Petroleum Conversion Corporation to the remaining 12,596 shares out of a block of 20,796 shares of its common stock and allows the claim thereto of James F. Egan, Public Administrator, of the County of New York, as administrator of the goods, chattels and credits of Fred B. Lloyd, deceased.

Dated: New York, N. Y., September 1, 1948.

Yours, etc., J. Harlin O'Connell, Attorney for Intervener Petroleum Conversion Corporation, 120 Broadway, New York 5, N. Y.

To: James A. Vaughan, Attorney for Interveners, E. Lewis Burnham and James A. Vaughan et al., 165 Broadway, New York 6, N. Y. Samuel Hershenstein, Esq., Attorney for Plaintiff, Albert G. Dickinson, 70 Pine Street, New York 5, N. Y. Joseph A. Cox, Esq., Attorney for James F. Egan, Public Administrator, etc., 51 Chambers Street, New [fol. 50] York 7, N. Y. J. Harlin O'Connell, Esq., Attorney for Defendant, A. R. L. Dohme, 120 Broadway, New York 5, N. Y. Ernest B. Osborne, Esq., pro se, 210 East 68th Street, New York 21, N. Y. Wickes, Riddell, Bloomer, Jacobi & McGuire, Attorneys for Cornelius R. Agnew, Executor of the Estate of George B. Agnew, deceased, and Thomas R. Williams, Executor of the Estate of Robert H. Neilson, deceased, 60 Broadway, New York 4, N. Y. Satterlee, Warfield & Stephens, Attorney for Marshall P. Slade, 49 Wall Street, New York 5, N. Y. John C. Sebright, Esq., Attorney for Edna D. Goodrich, Administratrix of the Estate of Andrew M. Outerson, deceased, 111 Broadway, New York 6, N. Y. Leo Kaplan, Esq., Attorney for Jerome I. Golinko, 122 East 42nd Street, New York 17, N. Y.

[fol. 51] EXHIBIT "F" TO AFFIDAVIT

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE

In Bankruptcy No. 1464

In the Matter of PETROLEUM CONVERSION CORPORATION, Bankrupt

ORDER

William M. Duffy, Jr. the trustee herein, being duly qualified and acting as such trustee, having reported that, based on his examination of the record of the proceedings in *Albert G. Dickinson* v. *Arthur Rinke et al.* no. E.-86-366 in the United States District Court for the Southern District of New York, he is of the opinion that an appeal to the Court of Appeals for the second circuit would be fruitless and would result in no benefit to the bankrupt estate and that he, the said trustee proposes not to prosecute said appeal, but would recommend that if any creditor desired to prosecute the said appeal in the name of and for the benefit of said estate and/or the trustee but without liability on the part of said estate or the trustee for any costs, fees or expenses, unless said appeal be successful and then only in such amounts that might be allowed by this court, then such prosecution should be allowed under the authority of sec. 64a(1) of the Bankruptcy Act (see 3 Collier on Bankruptcy 64.164); and this court having entered an order on January 19, 1949 provided for a meeting of creditors to be held on February 4, 1949 for the purpose of allowing creditors to be heard with respect to recommendations of trustee; and copies of the report of the trustee and of the order calling said meeting of creditors having been sent to all creditors more than 10 days prior to said meeting; and no creditors having objected to the recommendations of the [fols. 52-53] trustee; it is, this ninth day of February 1949:

Ordered that the trustee's proposal not to prosecute the aforementioned appeal is hereby approved and that the trustee's recommendation to allow its prosecution by creditors is hereby approved in principle, but this order is not to be

construed as granting to any specific creditor or creditors any right so to do.

Approved as to form.

(Sgd.) Stewart Lynch, Referee in Bankruptcy.

(Sgd.) Thomas Cooch, Richard F. Corroon, John S. Walker, Thomas J. Healey, Jr., Albert J. Stiftel.

[fol. 54] UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

AFFIDAVIT OF ALEXANDER KAHAN IN OPPOSITION TO MOTION TO DISMISS—Filed March 31, 1949

STATE OF NEW YORK,
County of New York, ss:

Alexander Kahan, being duly sworn, deposes and says:

That he is the attorney for the Trustee in Bankruptcy of the Intervener-Appellant, Petroleum Conversion Corporation, and makes this answering affidavit in opposition to the motion of the Plaintiff-Appellant, Albert G. Dickinson, to dismiss the appeal of the said Intervener-Appellant, Petroleum Conversion Corporation.

[fol. 55] Your deponent respectfully refers to his affidavits in support of the two motions returnable simultaneously herein—first for the extension of the time of the Intervener-Appellant, Petroleum Conversion Corporation, within which to file its record on appeal, to amend the title and to substitute Alexander Kahan Esq. as attorney for the Trustee in Bankruptcy of the said Intervener-Appellant, Petroleum Conversion Corporation, and secondly, the motion to amend the notice of appeal and the pleadings also made by the said Intervenor-Appellant, Petroleum Conversion Corporation, and asks that said affidavits be incorporated herein with the same force and effect as though fully set forth at length herein.

For the most part, the objections which have been asserted by the Plaintiff-Appellant, Dickinson, have been overcome by the second motion hereinabove stated.

It is respectfully pointed out to the Court that in view of the liberal attitude of Federal Courts towards amendment of pleadings and amendments of notices of appeal, particularly where, as in this case, the errors and omissions were made by counsel who preceded the present counsel for the Trustee in Bankruptcy, your deponent hopes and expects that this Court will grant the motion for amendment of both the notices of appeal and the pleadings, in which event Plaintiff-Appellant, Dickinson's motion automatically fails.

Your deponent also begs to point out to the Court that even without such amendments, there is no merit to the Dickinson motion and the lengthy affidavit in support thereof, since the final decree itself in paragraph "3" thereof by express language makes the earlier decree of April 10, 1947 final. It would have been a useless gesture on the part of the Petroleum Conversion Corporation to take an appeal from the interlocutory decree when the net result of the Court's making this decree final, in what the Court itself [fol. 56] calls a final decree, is to give the Intervener-Appellant, Petroleum Conversion Corporation, the right to appeal from the final decree of August 3, 1948, as well as from the interlocutory decree of April 10, 1947, which is made final by this final decree in express language.

The Plaintiff-Appellant, Dickinson, seeks in effect by his present motion, to take advantage of dubious technicalities, in an attempt to deprive the Trustee in Bankruptcy, of his unquestioned right of appeal and to impose upon the creditors and stockholders of Petroleum Conversion Corporation, such forfeitures; this practice is not looked upon with favor by Courts generally.

Plaintiff-Appellant Dickinson emphasizes the fact that the Referee in Bankruptcy had stated that the within appeal would not be prosecuted by the Trustee in Bankruptcy of Petroleum Conversion Corporation and that subsequently your deponent was directed to prosecute said appeal in behalf of said Trustee. The appeal is being prosecuted pursuant to Sec. 64a (1) of the Bankruptcy Act, by creditors of the Bankrupt Estate, where the Receiver or Trustee of the Bankrupt is unwilling or cannot go forward with such appeal. Both the Referee and Trustee in Bankruptcy merely followed the rules of this court in furthering the prosecution of the within appeal by the entry of the order dated February 9, 1949, designating your deponent to act as the at-

torney for the Trustee in the prosecution of said appeal. Certainly the plaintiff-appellant, Dickinson was not harmed by this procedure and his entire argument in this regard is specious at best.

Your deponent therefore respectfully prays that the motion to dismiss the appeal of the Intervener-Appellant, Petroleum Conversion Corporation, be denied both on the grounds that the motion is not warranted by the reasons [fols. 57-58] stated in support thereof and that any valid objections raised by Appellant Dickinson have been cured by the motion of Petroleum Conversion Corporation to amend, made simultaneously with the herein motion by the Intervener-Appellant, Petroleum Conversion Corporation.

Alexander Kahan.

Sworn to before me this 4th day of March, 1949. Victor Feingold, Attorney and Counsellor-at-Law, Exer. Powers of Notary Public, in the State of New York. Residing in Bronx County. Bronx Co. Clk's No. 1, Reg. No. A-274-F-9. N. Y. Co. Clk's No. 558 Reg. No. A-778-F-9. Commission Expires March 30, 1949.

[fol. 59] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT OF NEW YORK

[Title omitted]

MOTION TO EXTEND TIME TO DOCKET, ETC.—Filed March 31, 1949

Please Take Notice that upon the annexed affidavit of Alexander Kahan, Esq., sworn to February 10th, 1949 and the certified copy of order of Referee in Bankruptcy, Hon. Stewart Lynch, in the District Court of the U. S. for the District of Delaware dated February 9th, 1949 and upon all the proceedings heretofore had herein the undersigned will move this court on February 14, 1949, at 10:30 A. M., or as soon thereafter as counsel can be heard, in Room 1705, U. S. Court of Appeals for the Second Circuit, at the U. S. Courthouse, Foley Square, New York City, New York, for an order

1. Extending Intervener Appellant, Petroleum Conversion Corporation's, Bankrupt, by William M. Duffy,

Jr., Trustee in Bankruptcy, time to file its record on appeal and docketing the appeal herein, in said court in the matter entitled Albert G. Dickinson v. Arthur W. Rinke, et al. for a period of four months from February 15, 1949.

[fol. 60] 2. To amend the name of the Trustee of the Intervener Appellant, Petroleum Conversion Corporation, Bankrupt to William M. Duffy, Jr.

3. To substitute Alexander Kahan, Esq., as attorney for William M. Duffy, Jr., as Trustee in Bankruptcy of Petroleum Conversion Corporation, Bankrupt Intervener Appellant, in place and stead of James A. Vaughan and J. Harlin O'Connell, Esqs.,

and for such other and further relief as to this court may seem just and proper.

Dated: N. Y. February 10th, 1949.

Alexander Kahan, Esq., Attorney for William M. Duffy, Jr., as Trustee in Bankruptcy of Petroleum Conversion Corporation, Bankrupt, Intervener Appellant. Office & Post Office Address: 30 Broad Street, New York City, New York.

To: Samuel Hershenstein & Solomon Kaufman, Esqs., 70 Pine Street, New York City, New York; Joseph A. Cox, Esq., 51 Chambers Street, New York City, New York; James A. Vaughan, Esq., 165 Broadway, New York City, New York; Wickes, Riddel, Bloomer, Jacobi & McGuire, Esqs., 60 Broadway, New York City, New York; Satterlee, Warfield & Stephens, Esqs., 49 Wall Street, New York City, New York; John C. Sebright, Esq., 122 East 42nd Street, New York City, New York; Leo Kaplan, Esq., 122 East 42nd Street, New York City, New York; J. Harlin O'Connell, Esq., 120 Broadway, New York City, New York.

[fol. 61] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT OF NEW YORK

[Title omitted]

AFFIDAVIT OF ALEXANDER KAHAN, IN SUPPORT OF MOTION

STATE OF NEW YORK,
City of New York,
County of New York, ss.:

Alexander Kahan, Esq., being duly sworn deposes and says:

He is the attorney for Intervener Appellant, William M. Duffy, Jr., as Trustee of Petroleum Conversion Corporation, Bankrupt, having become such by virtue of an order of Referee in Bankruptcy, Hon. Stewart Lynch, District Court of the U. S. for the District of Delaware, dated February 9th, 1949, certified copy of which order is hereto annexed, in which court the bankruptcy proceedings of Intervener Appellant, Petroleum Conversion Corporation, have been pending since on or about July 19, 1948.

Intervener Appellant, Petroleum Conversion Corporation was adjudicated a Bankrupt on or about August 8, 1948 and William M. Duffy, Jr. was elected trustee for Inter-[fol. 62] vener Appellant, Petroleum Conversion Corporation, Bankrupt, on or about November 19, 1948.

The time of Intervener Appellant, Petroleum Conversion Corporation, Bankrupt, to file its record on appeal herein has been extended by court order and stipulation through February 15, 1949.

Deponent makes the within application for an additional extension of time of four months to file appellant's record on appeal herein for the following reasons:

1. The stenographic transcript of the trial in the District Court consists of approximately 2500 pages and is not yet available to deponent.

2. There are approximately 300 exhibits marked in evidence not yet available to deponent.

3. The opinion of the District Court is in excess of 100 pages.

4. Corporate records of Intervener Appellant, Petroleum Conversion Corporation, Bankrupt, are in Wilmington, Del-

aware, New York City, New York and elsewhere. It will take deponent considerable time to gather these records and make a thorough examination thereof, in order to adequately prepare for the effective prosecution of the within appeal.

5. The Judgment Debtor Albert G. Dickinson is the principal appellant herein and Intervener Appellant Petroleum Conversion Corporation, Bankrupt, intends to utilize the Dickinson Record on appeal to its fullest extent in the preparation, prosecution and argument of its appeal and a motion for leave so to do will be made to this court in due course.

Additionally because of the pending bankruptcy proceedings of Intervener Appellant Petroleum Conversion Corporation, the title of the Appellant on the within appeal should be amended to read, "WILLIAM M. DUFFY, JR., as trustee in [fol. 63] Bankruptcy of PETROLEUM CONVERSION CORPORATION, Bankrupt, Intervener Appellant." The Trustee's full name has been erroneously included as William F. Duffy, Jr.

Furthermore, amongst other things, the judgment from which the within appeal is being taken herein amounts to $408,949.57 with interest from August 3, 1948 and the trial record as well as the hereinabove other referred to data in Albert G. Dickinson v. Arthur W. Rinke, et al. is involved and lengthy and deponent believes that he will require at least four months within which to fully and properly assemble the material and to prepare the numerous issues of law and fact applicable upon the within appeal.

For all of the foregoing, deponent prays the granting of the within application for an extension of four months to file the record on appeal and docketing the appeal herein and for such other and further relief as to this court may seem just and proper. Deponent has made no previous application for the within relief.

Alexander Kahan (Sgd.)

Sworn to before me this 10th day of February, 1949. Victor Feingold, Attorney and Counsellor-at-Law, Exer. Powers of Notary Public in the State of New York, Residing in Bronx County. Bronx Co. Clk's No. 1, Reg. No. A-274-F-9. N. Y. Co. Clk's No. 558, Reg. No. A-778-F-9. Commission Expires March 30, 1949. (Seal.)

[fol. 63a] APPENDIX TO AFFIDAVIT

DISTRICT OF DELAWARE:

I, Stewart Lynch, Referee in Bankruptcy in and for said District, Do Hereby Certify that the attached copy of Order to Permit Continuation of Appeal in the case of Petroleum Conversion Corporation, bankrupt, No. 1464, has been compared with the original thereof and that it is a complete and correct copy of such original as it appears of record and on file in my office.

In Testimony Whereof I have hereunto set my hand at Wilmington in said District, this 9th day of February, 1949

(Sgd.) Stewart Lynch, Referee in Bankruptcy.

[fol. 64] APPENDIX TO AFFIDAVIT

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE

In Bankruptcy No. 1464

In the Matter of PETROLEUM CONVERSION CORPORATION, Bankrupt

Order to Permit Continuation of Appeal

At Wilmington, in said District, on this 9th day of February, 1949, upon the petition of Alexander Kahan, Esq., attorney and attorney-in-fact for Frederick K. Barbour, Prescott leB. Gardner, William H. Hayes, as surviving executor of the Estate of Emery L. Ferris, and George N. Fleming, creditors and noteholders of Petroleum Conversion Corporation, verified February 2, 1949, which petition prays an order of this court, to enable and permit the above named creditors by Alexander Kahan, Esq., their attorney, to continue the prosecution of the pending appeal in behalf of Petroleum Conversion Corporation, Bankrupt and the trustee thereof, William M. Duffy, Jr., in the U. S. Court of Appeals for the Second Circuit, from the decision and judgment of District Court Judge Vincent L. Leibell, in the case of Albert G. Dickinson v. Arthur W. Rinke, et al.—Docket No. In Equity E 86-366, U. S. District Court for the Southern District of New York, and upon all the proceedings heretofore had herein, it is

Ordered that the said creditors, Frederick K. Barbour, Prescott leB. Gardner, William H. Hayes, as surviving executor of the Estate of Emery L. Ferris, and George N. Fleming, by their attorney and attorney-in-fact, Alexander Kahan, Esq., 30 Broad Street, New York City, New York be and they hereby are permitted to continue the prosecution of [fol. 65] the said pending appeal in the U. S. Court of Appeals for the Second Circuit in behalf of Petroleum Conversion Corporation, Bankrupt, and the trustee thereof, William M. Duffy, Jr., from the decision and judgment of District Court Judge Vincent L. Leibell, in the case of Albert G. Dickinson v. Arthur W. Rinke, et al.—Docket No. In Equity E 86-366, U. S. District Court for the Southern District of New York and it is further

Ordered that the said appeal shall be prosecuted in the name of Petroleum Conversion Corporation, Bankrupt and William M. Duffy, Jr., as trustee, for the benefit of Petroleum Conversion Corporation, Bankrupt, but without liability on the part of said Bankrupt Estate for any costs, fees or expenses unless said appeal be successful and then only in such amounts as may be allowed by this court and it is further

Ordered that if a recovery is effected for the benefit of the Bankrupt Estate then the said within named creditors or any of them may petition this court for allowance for their reasonable costs and expenses including attorney's fees, pursuant to and as provided in Sec. 64a (1) of the Bankruptcy Act and it is further

Ordered that William M. Duffy, Jr., as trustee of Petroleum Conversion Corporation, Bankrupt shall make available to Alexander Kahan, Esq., 30 Broad Street, New York City, New York all corporate minutes of Petroleum Conversion Corporation, Bankrupt, the stenographic transcript and exhibits of the trial of the action Albert G. Dickinson v. Arthur W. Rinke, et al., Docket No. In Equity E 86-366 and all other documents and data as may be necessary to Alexander Kahan, Esq., in the prosecution of the said appeal but only to the extent that said trustee shall have custody and/or control of said minutes, transcript and exhibits, [fols. 66-67] and only on such terms and conditions as said William M. Duffy, Jr. shall deem necessary to protect the interests of himself and of the Bankrupt Estate in other respects, and it is further

Ordered that Alexander Kahan, Esq., 30 Broad Street, New York City, New York be and he is hereby substituted as the attorney for Appellant, Petroleum Conversion Corporation, Bankrupt, upon the said Appeal.

(S.) Stewart Lynch, Referee in Bankruptcy.

Approved as to form: (S.) Thomas Cooch, Richard F. Corroon, John S. Walker, Thomas J. Healy, Jr., Albert J. Stiftel.

[fol. 68] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT OF NEW YORK

[Title omitted]

MOTION TO AMEND NOTICE OF APPEAL, ETC.—Filed March 31, 1949

Please Take Notice that upon the annexed affidavit of Alexander Kahan, Esq., sworn to March 3, 1949, and upon all the proceedings heretofore had herein and pursuant to Sec. 1653 of the New Title 28 U. S. Code Judiciary and Judicial Procedure and Rule 15 a, b and c of the Federal Rules of Civil Procedure and such other provisions of the U. S. Code as may be applicable hereto, the undersigned will move this court on March 7, 1949 at 10:30 A. M., or as soon thereafter as counsel can be heard, in Room 1705, U. S. Court of Appeals for the Second Circuit, at the U. S. Courthouse, Foley Square, New York City, New York, for an order

Amending the Notice of Appeal of the Intervener Appellant Petroleum Conversion Corporation, Bankrupt by William M. Duffy, Jr., Trustee by adding to the Notice of Appeal heretofore duly filed herein dated September 1, 1948 by J. Harlin O'Connell, Attorney for Intervener Petroleum Conversion Corporation on behalf of William M. Duffy, Jr., as Temporary Receiver in Bankruptcy of the said Petroleum Conversion Corporation, the following:

[fol. 69] "And from each and every part of said decree dated August 3, 1948 as it may adversely affect the rights of said Petroleum Conversion Corporation; as well as from each and every part of the decree en-

tered in the above entitled action on April 10, 1947 as it may adversely affect the rights of the said Petroleum Conversion Corporation including but without limitation Paragraph Nos. 5, 8, 12, 13 and 14 thereof and any and all parts thereof that may adversely affect the rights of the said Petroleum Conversion Corporation."

Please take further notice that the undersigned will move this court for an order

Permitting the Intervener Petroleum Conversion Corporation to amend its pleadings to include,

A. A claim for rescission on the ground of fraud of the Settlement Agreement of January 6, 1938 entered into between the Intervener Petroleum Conversion Corporation and Plaintiff Albert G. Dickinson and his son H. Randel Dickinson as well as the return to Petroleum Conversion Corporation of the consideration paid by it thereunder to Plaintiff Albert G. Dickinson and his son H. Randel Dickinson and

B. To include the claim of an additional sum of $87,310.28 wrongfully and fraudulently paid to the Plaintiff Albert G. Dickinson on its behalf and out of its funds together with interest on the respective payments together with appropriate interest thereon from January 6, 1926 so as to make the total to be due and payable to the Petroleum Conversion Corporation $174,620.56 with interest as follows:

On $10,000.00 from January 25, 1926
On $10,000.00 from March 6, 1926
On $10,000.00 from March 22, 1926
On $10,000.00 from April 6, 1926
On $12,000.00 from April 10, 1926
On $10,000.00 from May 13, 1926
On $20,000.00 from August 24, 1926
On $5,310.28 from September 7, 1926
On $1,624.68 from September 7, 1926
On $15,000.00 from September 14, 1926
On $15,000.00 from September 28, 1926
On $30,000.00 from October 11, 1926
On $27,310.28 from December 10, 1926,

all fraudulently paid to the said Plaintiff Albert G. [fol. 70] Dickinson and Fred B. Lloyd, deceased, out of funds to which the said Petroleum Conversion Corporation was entitled, and

C. For such other amendments of the pleadings as may become necessary in the premises, and for such other and further relief as to this court may seem just and proper in the premises and upon such terms and conditions as the court may deem proper.

Dated: N. Y. March 3, 1949.

Alexander Kahan, Esq., Attorney for William M. Duffy, Jr., as Trustee in Bankruptcy of Petroleum Conversion Corporation, Bankrupt, Intervener, Appellant. Office & Post Office Address 30 Broad Street, New York City, New York.

To: Samuel Hershenstein & Solomon Kaufman, Esqs., 70 Pine Street, New York City, New York.

Joseph A. Cox, Esq., 51 Chambers Street, New York City, New York.

James A. Vaughan, Esq., 165 Broadway, New York City, New York.

Wickes, Riedel, Bloomer, Jacobi & McGuire, Esqs., 60 Broadway, New York City, New York.

Satterlee, Warfield & Stephens, Esqs., 49 Wall Street, New York City, New York.

John C. Sebright, Esq., 122 East 42nd Street, New York City, New York.

Leo Kaplan, Esq., 122 East 42nd Street, New York City, New York.

J. Harlin O'Connell, Esq., 120 Broadway, New York City, New York.

[fol. 71] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT OF NEW YORK

[Title omitted]

AFFIDAVIT OF ALEXANDER KAHAN IN SUPPORT OF MOTION

STATE OF NEW YORK,
City of New York,
County of New York, ss:

Alexander Kahan, Esq., being duly sworn deposes and says:

He is the attorney for Intervener Appellant, William M. Duffy, Jr., as Trustee of Petroleum Conversion Corporation, Bankrupt, having become such by virtue of an order of Referee in Bankruptcy, Hon. Stewart Lynch, District Court of the U. S. for the District of Delaware, dated Feb'y 9, 1949 as is heretofore fully set forth in the affidavit dated February 10, 1949 on the motion heretofore served upon the parties and noticed for argument in this court, which affidavit is respectfully incorporated herein by reference hereto as though fully set forth herein.

Your deponent has been served with a Notice of Motion by the Plaintiff Appellant Albert G. Dickinson herein for a dismissal of this appeal, the same being returnable on [fol. 72] March 7, 1949 which is the present return date for the aforesaid motion of your deponent.

In the short time since your deponent has become attorney for the Trustee herein he has tried to familiarize himself as quickly as possible with a record in excess of 2500 pages and 300 exhibits as well as 100 page opinion of the District Court. This has been a task of tremendous difficulties due to the fact that the records are not in your deponent's possession nor are they presently available to your deponent. Nevertheless your deponent has ascertained that there is necessity for amending the Notice of Appeal and the pleadings even from the examination of only the files of the District Court for the Southern District of New York.

Your deponent feels that he would be derelict in his duty as the attorney for the Trustee if he did not immediately ask this court for leave to amend the said Notice of Appeal and pleadings as is set forth in the Notice of Motion herein;

since without such relief the Trustee might be irreparably prejudiced in the prosecution of this appeal.

This has been particularly emphasized by the motion brought on behalf of the Plaintiff Appellant Dickinson returnable simultaneously herewith, in which motion the jurisdiction of this court, in so far as the appeal of the Trustee in Bankruptcy is concerned, has been attacked. The net result of the motion of the Plaintiff Appellant Dickinson is to claim that this court has no jurisdiction over the appeal heretofore taken by the Trustee in Bankruptcy on the various grounds stated in said motion. It is for this reason, particularly that Section 1653 of the New Title U. S. Code Judiciary and Judicial Procedure is applicable.

Your deponent wishes also to respectfully call the court's attention, as well as the attention of the attorneys for all the parties hereto, to the fact that he may find it necessary after a fuller examination of the entire record in these [fols. 73-74] proceedings to request further amendments and respectfully urges on behalf of the Trustee that the relief requested herein is without prejudice to any further relief that may become necessary, upon fuller examination and investigation of the trial record, exhibits and other applicable records herein by deponent.

Wherefore your deponent prays for the relief set forth in the annexed Notice of Motion, reserving any and all rights for further relief as hereinabove set forth.

(Sgd.) Alexander Kahan.

Sworn to before me this 3rd day of March, 1949. Victor Feingold, Attorney and Counsellor-at-Law, Exer. Powers of Notary Public in the State of New York. Residing in the Bronx County. Bronx Co. Clk's No. 1, Reg. No. A-274-F-9. N. Y. Co. Clk's No. 558, Reg. No. A-778-F-9. Commission Expires March 30, 1949. (Seal.)

[fol. 75] UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

AFFIDAVIT OF JAMES A. VAUGHAN IN OPPOSITION TO MOTION, AMEND NOTICE OF APPEAL, ETC.

STATE OF NEW YORK,
County of New York:

James A. Vaughan, being duly sworn, deposes and says:

1. I am an attorney-at-law, and attorney for Burnham and Vaughan, interveners for themselves and all other Rinke Agency subscribers, appellee-respondents in the above action, 72 of whom are judgment creditors under the decree and judgment entered herein dated August 3, 1948.

2. This affidavit is made in opposition to the motion herein by "Alexander Kahan, Esq., attorney for William M. [fol. 76] Duffy, Jr. as Trustee in Bankruptcy of Petroleum Conversion Corporation, Bankrupt, intervener-appellant" for an order, (a) extending the time of "Intervener appellant, Petroleum Conversion Corporation, Bankrupt, by William M. Duffy, Jr., Trustee in Bankruptcy, to file its record on appeal and docketing the appeal herein" for a period of four (4) months from February 15, 1949; and (b) "to substitute Alexander Kahan, Esq. as attorney for William M. Duffy, Jr. as Trustee in Bankruptcy for Petroleum Conversion Corporation, Bankrupt, intervener appellant, in place and stead of James A. Vaughan and J. Harlin O'Connell, Esquires."

3. Petroleum Conversion Corporation now in bankruptcy in the District Court of the United States for the District of Delaware was an intervener in the above action and its attorney of record was J. Harlin O'Connell, Esq. The deponent was not an attorney of record for the bankrupt. No substitution of counsel for the bankrupt has been filed herein by the attorney of record for the bankrupt, J. Harlin O'Connell.

4. A notice purporting to be a Notice of Appeal from the decree herein dated and filed August 3, 1948 was given on September 1, 1948 by "J. Harlin O'Connell, Attorney for Intervener Petroleum Conversion Corporation," that "Wil-

liam M. Duffy, Jr., as temporary receiver in bankruptcy of Petroleum Conversion Corporation Bankrupt, on behalf of said Petroleum Conversion Corporation, an intervener herein, hereby appeals. . . ." Thereafter in the District Court for District of Delaware at Wilmington before Stewart Lynch, Esq., Referee in Bankruptcy, hearings were held for the purpose of determining whether or not the Trustee of the bankrupt should be authorized to prosecute such appeal. On January 19, 1949, said William M. Duffy, Jr., Trustee, submitted his Report, copy of which is annexed hereto marked "Exhibit A", recommending that such appeal be not prosecuted by and at the expense of the bankrupt estate. The order of said Referee in Bankruptcy entered thereon is dated February 9, 1949, and copy thereof is annexed hereto marked "Exhibit A-1." The Court's attention is particularly directed to this order.

[fol. 77] 5. Thereafter and on or about February 4, 1949, Alexander Kahan, Esq., Attorney for Frederick E. Barbour, Prescott LeB. Gardner, William H. Hayes, as surviving executor of the Estate of Emery L. Ferris, and George N. Fleming, creditors of Petroleum Conversion Corporation, in bankruptcy, prayed for an order permitting said creditors to prosecute an appeal herein on behalf of said bankrupt and the Trustee thereof. The order of the Referee (annexed to Mr. Kahan's supporting affidavit) granting such permission provides, among other things, that

> ". . . The said creditors, Frederick K. Barbour, Prescott LeB. Gardner, William H. Hayes, as surviving executor of the Estate of Emery L. Ferris, and George N. Fleming, by their attorney and attorney-in-fact, Alexander Kahan, Esq., 30 Broad Street, New York City, New York be and they hereby are permitted to continue the prosecution of the said pending appeal."

Said order provides further that

> ". . . the said appeal shall be prosecuted in the name of Petroleum Conversion Corporation, Bankrupt and William M. Duffy, Jr., as trustee, for the benefit of Petroleum Conversion Corporation, Bankrupt, but without liability on the part of said Bankrupt Estate for any costs, fees or expenses unless said appeal be successful and then only in such amounts as may be allowed by this court."

6. None of the said four creditors of the bankrupt named in said order have appeared herein. They are not before this court. The said order of the Referee confers authority only on the said named creditors to continue the prosecution of the said purported pending appeal.

7. Under the authority of said order of the Referee, such appeal may be prosecuted in the name of the bankrupt and its Trustee but "without liability on the part of said bank-
[fol. 78] rupt estate for any costs" except as the District Court for the District of Delaware may allow in the event such appeal be successful; and said order expressly stipulates that said appeal, if prosecuted, shall be prosecuted in the name of the bankrupt and its Trustee with such limitation of liability in connection therewith.

8. There is no party before this court against whom costs could be assessed in the event such appeal on behalf of the bankrupt estate and the Trustee be unsuccessful.

9. Heretofore and on March 10, 1948 said Alexander Kahan, Esq. made a motion in the Court below for an order permitting the intervention of two former preferred stockholders of Petroleum Conversion Corporation, now in bankruptcy, to intervene derivatively. In his affidavit dated March 1, 1948 in support of that motion Mr. Kahan stated:

> "Deponent has examined all available records of the within litigation, consisting of the trial record, several opinions of the trial and appeal courts, briefs, exhibits, and other relevant data appertaining thereto . . ."

Said motion to intervene derivatively was denied by Honorable Vincent L. Leibell, D.J. by order entered March 22, 1948.

10. Accordingly in view of Mr. Kahan's activities and stated familiarity with the trial records, briefs, exhibits, etc. of said Petroleum Conversion Corporation in the litigation herein, his motion for an order for additional time of four (4) months from February 15, 1949, within which to prepare and complete his record on appeal is unreasonable. Further delay in the prosecution of the appeal herein would be prejudicial to the seventy-two (72) Rinke Agency subscribers in whose favor the decree and judgment dated August 3. 1948 has been entered herein.

Wherefore deponent prays that the motion herein be denied on the grounds:

1. That the real parties, to wit the four creditors, Frederick K. Barbour, Prescott LeB. Gardner, William H. Hayes, surviving executor of the Estate of Emery L. Ferris, and George N. Fleming of the bankrupt, Petroleum Conversion Corporation, have not appeared herein.

[fol. 79] 2. That in event their prosecution of the appeal herein by said creditors in behalf of the bankrupt and its trustee should not be successful, there is no one before this Court against whom costs may be assessed.

3. That no bond for costs has been filed herein for or in behalf of the bankrupt and its trustee incident to the purported appeal.

4. That there is no person properly before the Court to prosecute an appeal for and in behalf of the bankrupt and its trustee.

(Signed) James A. Vaughan, Attorney for E. Lewis Burnham and James A. Vaughan et al., Interveners-Appellees, Office and P. O. Address: 165 Broadway, New York 6, N. Y.

Sworn to before me this 3rd day of March, 1949. Anne K. Conway, Notary Public in the State of New York. Qualified in Bronx Co. Bronx Co. Clk's No. 165, Reg. No. 366-C-0. N. Y. Co. Clk's No. 1198, Reg. No. 1091-C-0. Commission Expires March 30, 1950.

To: Alexander Kahan, Esq., Attorney for William M. Duffy, Jr., as Trustee in Bankruptcy of Petroleum Conversion Corporation, Bankrupt, Interverer-Appellant, 30 Broad Street, New York, N. Y.

Solomon Kaufman, Esq., Attorney for Plaintiff-Appellant, 70 Pine Street, New York 5, N. Y.

J. Harlin O'Connell, Esq., 120 Broadway, New York, N. Y.

Wickes, Riddel, Bloomer, Jacobi & McGuire, Esqs., 60 Broadway, New York, N. Y.

Satterlee, Warfield & Stephens, Esqs., 49 Wall Street, New York, N. Y.

John C. Sebright, Esq., 122 East 42nd Street, New York, N. Y.

Leo Kaplan, Esq., 122 East 42nd Street, New York, N. Y.
Joseph A. Cox, Esq., 51 Chambers Street, New York, N. Y.

[fol. 80] EXHIBIT A TO AFFIDAVIT

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE

In Bankruptcy No. 1464

In the Matter of PETROLEUM CONVERSION CORPORATION, Bankrupt

Report of Trustee

To: Stewart Lynch, Esq., Referee in Bankruptcy.

William M. Duffy, Jr., the Trustee herein, being duly qualified and acting as such Trustee, respectfully reports his conclusions and recommendations as to the advisability of instituting and prosecuting an appeal from the decision of the United States District Court for the Southern District of New York to the United States Circuit Court of Appeals, Second Circuit, in the case of Albert G. Dickinson versus Arthur W. Rinke, *et* al.—No. E-86-366, as follows:

The single matter with which the Trustee and his attorney have been most concerned is the question of whether or not the Trustee should prosecute an appeal to the United States Court of Appeals for the Second Circuit from the decision of Judge Vincent L. Leibell in the United States District Court for the Southern District of New York in the case of Albert G. Dickinson v. Arthur W. Rinke, et al., No. E-86-366, in which Petroleum Conversion Corporation, as an Intervener, had asserted a Counterclaim.

Judge Leibell held, in brief, that the counterclaim stated a good cause of action but that the right of action belonged to the various subscribers to the so-called Rinke Agency, represented as a class by E. Lewis Burnham and James A. Vaughn who, also as interveners, had asserted a similar counterclaim and did not belong to the Bankrupt.

The cause of action, Judge Leibell held, was that Dickinson and one Lloyd fraudulently procured the payment to them of $176,245.24 from funds held by the Rinke Agency

in connection with the purchase of the Texas City plant of Knox Process Corporation which was being sold through the foreclosure of liens of creditors, and that Dickinson and [fol. 81] Lloyd had to make restitution.

If it could be shown (a) That Petroleum Conversion Corporation succeeded to any rights which Knox Process Corporation may have had in the Rinke Agency funds; and (b) that Knox Process Corporation had rights in said funds over and above the fact that the purpose of the subscriptions to the Rinke Agency funds ostensibly was to rescue the business of Knox Process Corporation from the creditors and for the investors, then Petroleum Conversion Corporation conceivably should be entitled to the recovery.

To put it mildly, the record in Dickinson v. Rinke is involved and lengthy. The Trustee and his attorney have studied the Opinion of Judge Leibell, his Findings of Fact and Conclusions of Law, portions of the Testimony, and many of the exhibits. In addition, they have discussed the matter with both Mr. James A. Vaughan and Mr. Alexander Kahan, attorney for certain creditors of Petroleum Conversion Corporation.

The Trustee is satisfied from his investigation that Judge Leibell had sufficient evidence and supporting authorities for finding as he did and believes that an appeal to the Court of Appeals would probably be fruitless.

It seems quite clear to the Trustee that the particular fraud complained of was just one part of a master scheme to defraud the subscribers to Rinke Agency generally, that the schemers never intended that Knox Process Corporation or Petroleum Conversion Corporation should get anything over what might be necessary to conceal the fraud, and that any representations to the subscribers to the contrary were simply false and what might be called window-dressing. See for examples of evidence of this, exhibits 17, 18, 19, U, and III.

It seems unlikely that any further evidence of any probative value could exist which would overcome contrary evidence in the record.

[fol. 82] Mr. Kahan, in urging an appeal, lays great stress on a claimed conflict of interest between Mr. Vaughan and Petroleum Conversion Corporation. It is admittedly true that Mr. Vaughan, and Mr. J. Harlin McConnell, attorney for Petroleum Conversion Corporation, worked together on

the case, and this, it seems to the Trustee, was fully justified to the extent that their respective claims were idential except as to the identity of the proper claimant. This conflict was disclosed to Judge Leibell on the first page of the joint brief submitted by them at the conclusion of the trial.

Apparently no objection was raised to this cooperation between counsel until about March 1, 1948, when Mr. Kahan petitioned for leave to intervene and made substantially the same contentions. Judge Leibell, in denying this petition on March 16, 1948, said, inter alia:

> "In so far as their petition for leave to intervene is based on the charge that the corporation's rights in respect to the $176,000 claim have not been fully and honestly presented, the history of this litigation, as set forth in the Court's opinion of October, 1946, and the trial record show that any such charge is baseless."

The Trustee accordingly proposes not to prosecute said appeal and petitions the approval of this court.

Trustee would recommend that if any creditor desires to prosecute said appeal in the name of and for the benefit of the bankrupt estate and/or the Trustee, but without liability on the part of said estate for any costs, fees, or expenses, unless said appeal be successful and then only in such amounts as might be allowed by this court, then such prosecution should be allowed under the authority of Section 64a(1) of the Bankruptcy Act (See 3 Collier on Bankruptcy, Par. 64.104).

Wherefore, your petitioner prays that his decision in this matter be approved by this Court.

Respectfully submitted, (Sgd.) William M. Duffy, Jr.,
Trustee.

(Sgd.) Thomas Cooch, Attorney for Trustee.

[fol. 83] EXHIBIT A-1 TO AFFIDAVIT

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE

In Bankruptcy No. 1464

In the Matter of PETROLEUM CONVERSION CORPORATION, Bankrupt

ORDER

William M. Duffy, Jr. the trustee herein, being duly qualified and acting as such trustee, having reported that, based on his examination of the record of the proceedings in *Albert G. Dickinson* v. *Arthur Rinke et al.* no. E.-86-366 in the United States District Court for the Southern District of New York, he is of the opinion that an appeal to the Court of Appeals for the second circuit would be fruitless and would result in no benefit to the bankrupt estate and that he, the said trustee proposes not to prosecute said appeal, but would recommend that if any creditor desired to prosecute the said appeal in the name of and for the benefit of said estate and/or the trustee but without liability on the part of said estate or the trustee for any costs, fees or expenses, unless said appeal be successful and then only in such amounts that might be allowed by this court, then such prosecution should be allowed under the authority of sec. 64a(1) of the Bankruptcy Act (see 3 Collier on Bankruptcy 64.164); and this court having entered an order on January 19, 1949 provided for a meeting of creditors to be held on February 4. 1949 for the purpose of allowing creditors to be heard with respect to recommendations of trustee; and copies of the report of the trustee and of the order calling said meeting of creditors having been sent to all creditors more than 10 days prior to said meeting; and no creditors having objected to the recommendations of the [fols. 84-85] trustee; it is, this ninth day of February, 1949:

Ordered that the trustee's proposal not to prosecute the aforementioned appeal is hereby approved and that the trustee's recommendation to allow its prosecution by creditors is hereby approved in principle, but this order is not to

be construed as granting to any specific creditor or creditors any right so to do.

Approved as to form.

(Sgd.) Stewart Lynch, Referee in Bankruptcy.

(Sgd.) Thomas Cooch, Richard F. Corroon, John S. Walker, Thomas J. Healy, Jr., Albert J. Stifte..

[fol. 86] UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1948

No. —

(Motions Argued March 7, 1949)

Docket No. —

ALBERT G. DICKINSON, Appellant,

v.

FRANCIS J. MULLIGAN, Public Administrator, Appellee-Appellant; E. Lewis Burnham, et al., Appellees, and Petroleum Conversion Corporation, Appellant

Before: L. Hand, Swan and Frank, Circuit Judges

OPINION—March 31, 1949

On motion to dismiss the appeal of the Petroleum Conversion Corporation from a judgment of the District Court for the Southern District of New York, entered August third, 1948.

[fol. 87] Solomon Kaufman, attorney for the appellant, Dickinson, and James A. Vaughan, attorney for E. Lewis Burnham, et al, appellees, for the motion.

Alexander Kahan, opposed.

L. HAND, Circuit Judge:

The appellant, Dickinson, and the appellees, Burnham and others, constituting the "Rinke Agency Subscribers," move to dismiss the appeal of the Petroleum Conversion Corporation from a judgment of the district court entered August third, 1948. The chief question is whether

the corporation could have appealed from an earlier judgment, entered on April tenth, 1947, which dismissed a counterclaim filed by it after it had been allowed to intervene in the action; or whether it could appeal only from the judgment of 1948. Other questions, relating to the formal regularity of the appeal and to an extension of the time within which to file the record and brief, we reserve for the moment. Some outline of the action and what has gone before is necessary to an understanding of the motion. Dickinson sued Lloyd and others to impress a lien upon certain shares of the Petroleum Conversion Corporation, not then a party to the action; the district judge dismissed the complaint, and we reversed the judgment on January nineteenth, 1943.* Our opinion sufficiently states the controversy as it was at that time. On December third, 1943, the Petroleum Conversion Corporation was allowed to intervene by consent, and it filed a counterclaim in which it demanded the cancellation of a large number of its shares, on the ground that they had [fol. 88] been fraudulently issued, and the recovery of $87,310.28 from Dickinson and Lloyd, alleged to have been unlawful profits, obtained while acting as fiduciaries. On the same day Burnham and Vaughan were also allowed to intervene upon behalf of themselves and all other subscribers to a fund, known as the "Rinke Agency Subscribers," and to file a counterclaim demanding recovery from Dickinson and Lloyd of the same amount as the Petroleum Conversion Corporation claimed in its counterclaim.

The cause was tried a second time in 1944 and 1945, and, after long delay, an interlocutory judgment was finally entered on April tenth, 1947, as follows:

(1) Dismissing the complaint of Dickinson in toto;

(2) Declaring that the Petroleum Conversion Corporation had no right to 244,041 shares of its stock, then in possession of the court, and directing it to issue new certificates for those shares to the shareholders of another corporation, but that any shares not so distributed should be transferred to others as might be later decreed;

(3) Declaring that of 20,796 shares of its stock in possession of Lloyd's administrator, 8,200 should be de-

* *Dickinson* v. *Rinke*, 132 Fed. (2) 805.

livered to the Petroleum Conversion Corporation, but that its claim to the remaining 12,596 shares be dismissed;

(4) Dismissing its claim for a rescission of a contract between itself and the plaintiff and his son;

(5) Dismissing its claim against Dickinson and Lloyd for the sum of $87,310.28;

(6) Dismissing the claims of Lloyd's administrator altogether;

[fol. 89] (7) Granting recovery of $174,620.56 with interest against Dickinson and Lloyd's administrator in favor of the "Rinke Agency Subscribers," and providing a concourse of all these, by which their several claims could be liquidated and the amounts ascertained to which each was entitled out of the sum mentioned.

On August third, 1948, after appropriate hearings, the district court entered a final judgment, fixing the several claims of all the "Rinke Agency Subscribers," who had proved their claims, and barring the claims of those who had not. Thus, it appears that the judgment of April tenth, 1947, finally disposed of the counterclaim of the Petroleum Conversion Corporation, as well as of any claim against that corporation by any of the parties; there remained, so far as that corporation was concerned, only the issue of those of its shares to others which the judgment directed—merely ministerial acts on any theory. That judgment was not final, however, as to the "Rinke Agency Subscribers," and became so only by the judgment entered on August third, 1948.

Had the petition of the Petroleum Conversion Corporation to intervene been denied, the denial would have been appealable, because in that event the petitioner would not have been "at liberty to assert or protect" its interests in some more appropriate proceeding."* If so, it is not easy to understand why a party who has been allowed

---

* *Brotherhood of Railroad Trainmen* v. *Baltimore & Ohio R. R. Co.*, 331 U. S. 519, 524;
Missouri-Kansas Pipe Line Co. v. *United States*, 312 U. S. 502, 508.

to intervene, should not be allowed an immediate appeal from a judgment dismissing his claim after a trial. The petition of intervention must within its own four corners [fol. 90] disclose the basis of the claim, and the merits so disclosed will determine the right to intervene; there would appear to be no more reason to accelerate the right to appeal when the facts which it alleges, if true, do not justify the claim in law, than when, though the allegations are enough, they turn out to be false. On the other hand it is true that the whole nexus, or nidus, of facts out of all the disputes and claims arose were not disposed of by the judgment of April tenth, 1947. True, that decree did decide that Dickinson and Lloyd owed the "Rinke Agency Subscribers" about $175,000 and that was a definitive decision; but it did not decide who was to participate in that limited award. That required another complicated proceeding in which over seventy claims were tried out and liquidated, and at the end of which all claimants were barred who had not appeared. That was in no sense a ministerial implementation of the judgment of April tenth, 1947.

In the view of all members of the court, as it is now constituted, this should make no difference for the whole counterclaim of the Petroleum Conversion Corporation had been finally disposed of on April tenth, 1947; and as to it the action was at an end as much as though it had been denied the right to intervene at all; indeed, the judgment was more final, so to say, because, unlike the denial of a petition to intervene, it was a bar to any effort to relitigate the claims determined. On the other hand, we cannot find any tenable distinction between the situation at bar, and that which was before the court in *Clark* v. *Taylor*,* where we dismissed the appeal. It is true that the interlocutory judgment in that case had not decided anything as between the plaintiff and Taylor, the presi- [fol. 91] dent of the A. S. C. A. P.; in which regard it was different from the judgment of April tenth, 1947, which did decide that Dickinson and Lloyd were liable to the "Rinke Agency Subscribers," and what was the limit of that liability. But we do not understand that the majority in *Clark* v. *Taylor, supra,* went upon any such distinction; on the contrary they regarded the "transaction," the

* 163 Fed. (2) 940.

"occurrence" as a whole, as the controversy, not the series of mutual rights and liabilities which had arisen out of it; and they held that until all these had been determined, no appeal lay, however finally any part of those rights and liability might be disposed of. It was only in case "transactions" or "occurrences" wholly disconnected were coupled, as the Rules permitted, that separate appeals could be taken. That case was decided only after the greatest deliberation, and the opinions then rendered contain all that can be said in support of either view. It appears to all three of us in the present court most undesirable to repudiate a precedent so established. In a final court of varying composition it might be asking too much that the first decision should become an authoritative precedent against the convictions of the other members, but we are not in that predicament. Dickinson and the "Rinke Agency Subscribers" may be able to secure a review by certiorari in the Supreme Court; and, if they fail, it is either because that court believes that the first decision was right, or because a solution of the issue is not of enough importance to demand its intervention. In either event we ought to be content, as we are, to sink our differences, and yield to the precedent, whatever our confidence in our conclusion. We shall therefore deny the motion, so far as it depends upon the argument that the judgment of April tenth, 1947, was final as to the Petroleum Conversion Corporation, and that by its failure then to appeal it lost any right of review.

[fol. 92] The formal defects of the appeal need not detain us long. The Petroleum Conversion Corporation was adjudicated a bankrupt in the District of Delaware on August eighth, 1948, and one, Duffy, was appointed its temporary receiver. On September first, 1948, a notice of appeal was filed in the office of the clerk of the Southern District of New York, signed by the attorney before bankruptcy of the Petroleum Conversion Corporation. This notice purported to ask a review of the provisions of the judgment of August third, 1948, which dismissed the counterclaim of the Petroleum Conversion Corporation; but there were no such provisions in that judgment; they were in the judgment of April tenth, 1947. Perhaps the appellant thought that the judgment of August third, 1948, reaffirmed the earlier judgment; but at any rate the intent was perfectly manifest and that must

control. The notice of appeal described Duffy, the temporary receiver, as the appellant, but declared that he was appealing in behalf of the Petroleum Conversion Corporation. Nothing further was done until January nineteenth, 1949, when at the request of Duffy, who had by then become the trustee, the referee called a meeting of creditors in Wilmington for February fourth to consider whether the appeal should be prosecuted by the trustee. The trustee recommended against this course, and, since at the creditors' meeting no one objected to his decision, the referee approved the recommendation. However, he also approved another recommendation of the trustee; *i.e.*, that the appeal might be prosecuted by individual creditors at their own expense, and an order to that effect was entered on February ninth. In accordance with this the referee on the same day passed a second order, allowing four named creditors to prosecute the appeal on behalf of the Petroleum Conversion Corporation and of its trustee, without cost to the bankrupt estate. [fol. 93] A bankrupt even after adjudication may commence a suit in his name before the appointment of a trustee,* although the trustee may refuse to prosecute it after he had been appointed. The same must be true of an appeal, which is akin to a suit in another court, and used to be so regarded, even formally. Since the Petroleum Conversion Corporation, though bankrupt, could take the appeal, as a step quite outside the bankruptcy proceeding, it was free to be represented by an attorney of its choice. Moreover, it was within the power of the bankruptcy court to allow the four creditors at their own cost to prosecute the appeal as a possible asset of the estate. The appellant must post the necessary bond and otherwise conform to the rules, but the motions to dismiss the appeal will be denied.

The motion to be allowed four months within which to perfect the appeal will also be granted, dating from April first, 1949. The appeal can under no circumstances be heard at the present term of this court, and it is possible that the Supreme Court may grant certiorari. The litigation has

---

* *Johnson* v. *Collier*, 222 U. S. 538;
Danciger v. *Smith*, 276 U. S. 542;
Meyer v. *Fleming*, 327 U. S. 161, 165-168;
Paradise v. *Vogtlandische Maschinen-Fabrik*, 99 Fed. (2) 53 (C. A. 3).

already been so long delayed that this further delay cannot be of serious moment.

Motions to dismiss denied.

Motion to extend the time to file the record and brief extended to August first, 1949.

[fols. 94-95] UNITED STATES COURT OF APPEALS, SECOND CIRCUIT

[Title omitted]

ORDER DENYING MOTION TO DISMISS—March 31, 1949

Motions having been made herein to extend the time to perfect the appeal; to correct the title of the cause; to substitute attorneys for Intervenor-Appellant; to amend the notice of appeal; to amend the pleadings; and to dismiss the appeal,

Upon consideration thereof, it is

Ordered that the motion to dismiss the appeal be and it hereby is denied.

Further ordered that the time to file the record and brief be and it hereby is extended to August 1, 1949.

Alexander M. Bell, Clerk.

[fol. 96] IN UNITED STATES COURT OF APPEALS

DECISION ON RECONSIDERATION—May 26, 1949

On Wednesday, May 25, 1949, an oral ex parte application was made to Hon. Learned Hand, Chief Judge for a reconsideration of the motion found here on pages 59 to 67.

The following is the court's endorsement made on the motion papers as a result of the application for reconsideration:

"Motion denied except as already granted on March 31, 1949.

May 26, 1949.

L. H., T. W. S., J. N. F., C.J.J."

[fols. 97-98] UNITED STATES COURT OF APPEALS, SECOND CIRCUIT

[Title omitted]

ORDER DENYING MOTION TO EXTEND TIME, ETC.—May 26, 1949

An application having been made herein by counsel for Intervenor, Petroleum Conversion Corporation, that the court reconsider the motion made to extend the time, to correct the title of the cause and to substitute attorneys for Intervenor-Appellant,

Upon consideration thereof, it is

Ordered that the motion to extend the time, to correct the title of the cause and to substitute attorneys for Intervenor-Appellant be and it hereby is denied, except as already granted in the opinion rendered by the Court on March 31, 1949.

Alexander M. Bell, Clerk.

[fol. 99] IN UNITED STATES COURT OF APPEALS

DECISION ON MOTION TO RECONSIDER—May 26, 1949

On Wednesday, May 25, 1949, an oral ex parte application was made to Hon. Learned Hand, Chief Judge for a reconsideration of the motion found here on pages 68 to 74.

The following is the court's endorsement made on the motion papers as a result of the application for reconsideration:

"Motion denied.

L. H., T. W. S., J. N. F., C. JJ."

May 26, 1949.

[fol. 100-101] UNITED STATES COURT OF APPEALS, SECOND CIRCUIT

[Title omitted]

ORDER DENYING MOTION TO RECONSIDER—May 26, 1949

An application having been made herein by counsel for Intervenor, Petroleum Conversion Corporation, that the court reconsider the motion made to amend the notice of appeal and the pleadings,

Upon consideration thereof, it is.

Ordered that the motion to amend the notice of appeal and the pleadings be and it hereby is denied.

Alexander M. Bell, Clerk.

[fol. 102] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 102] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 10, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted, limited to questions 1 and 2 presented by the petition for the writ. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.